

PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE PART

THIS IS A CLAIMS MADE COVERAGE PART WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds Loss** resulting from **Claims** first made against the **Insureds** during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts**.

II. DEFINITIONS

(A) **“Administration”** means:

- (1) handling records in connection with **Employee Benefits**;
- (2) effecting enrollment, termination or cancellation of employees under an **Employee Benefits** program;
- (3) giving counsel to employees with respect to **Employee Benefits**; or
- (4) interpreting **Employee Benefits**.

(B) **“Claim,”** as defined in GENERAL DEFINITIONS (B), shall be deemed to include, for purposes of this Coverage Part:

- (1) a written notice of the commencement of an investigation by the Department of Labor or the Pension Benefit Guaranty Corporation; or
- (2) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against an **Insured** for a **Wrongful Act**.

(C) **“Company”** means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or, subject to CONDITION (A) of this Coverage Part, during the **Policy Period**.

(D) **“Employee Benefits”** means any **Plan**, workers’ compensation insurance, unemployment insurance, Social Security or disability benefits.

(E) **“Insured”** means the **Insured Persons**, any **Sponsor Organization** or any **Plan**.

(F) **“Insured Person”** means any director, officer, partner, principal, member, trustee or employee of any **Plan** or of any **Sponsor Organization** while acting in his or her capacity as a fiduciary of any **Plan**.

- (G) “**Loss**,” as defined in GENERAL DEFINITIONS (G), will not include:
- (1) fines, penalties or taxes imposed by law, except that **Loss** may include civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) for inadvertent violation of Section 406 of ERISA, and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty; and
 - (2) benefits due or to become due under the terms of any **Plan**, unless and then only to the extent that recovery for such benefits is based on a **Wrongful Act** and is payable as the personal obligation of an **Insured** who is a natural person; provided that **Loss** shall include **Defense Expenses** with respect to any **Claim** seeking benefits due or to become due under the terms of any **Plan**.
- (H) “**Pension Benefit Plan**” means any employee pension benefit plan, as such term is defined in ERISA.
- (I) “**Plan**” means:
- (1) the **Pension Benefit Plan(s)** identified in the Designated Plan Endorsement attached to this Coverage Part, and any trust established to hold the assets of any such **Pension Benefit Plan(s)**;
 - (2) any **Welfare Benefit Plan** which was, is now, or becomes sponsored by any **Sponsor Organization**;
 - (3) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created during the **Policy Period** by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization** for the employees thereof, but only if the **Insured** provides the Insurer with written notice of the creation of such **Plan** within ninety (90) days of the effective date thereof; and
 - (4) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, of any entity acquired during the **Policy Period** through the merger, consolidation or otherwise by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization**, but only if:
 - (a) the **Insured** provides the Insurer such additional information with respect thereto as the Insurer may reasonably require;
 - (b) the **Insured** provides the Insurer written notice of such acquisition as soon as practicable after the effective date thereof; and
 - (c) the Insurer specifically agrees by written endorsement to provide coverage with respect to such **Plan** and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion shall deem appropriate.
- (J) “**Sponsor Organization**” means the **Company** while acting in its capacity as a sponsor of a **Plan**.
- (K) “**Welfare Benefit Plan**” means any employee welfare benefit plan, as such term is defined in ERISA.
- (L) “**Wrongful Act**” means any actual or alleged:
- (1) breach of the duties, responsibilities or obligations imposed upon fiduciaries of any **Plan** by ERISA or the common law or statutory law of any jurisdiction governing such **Plan**; or
 - (2) negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**.

III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- (A) brought about or contributed to in fact by any:
- (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - (2) profit or remuneration gained by any **Insured** to which such is not legally entitled;
- as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A), such **Insured** will repay the Insurer upon demand all **Loss** paid on behalf of such **Insured** in connection with such **Claim**;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other policy of insurance;
- (C) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;
- (E) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which inceptioned prior to the Pending And Prior Proceeding Date set forth in ITEM 6(f) of the Declarations;
- (F) any **Claim** arising out of any actual or alleged liability of the **Company** under any express contract or agreement; however, this EXCLUSION (F) will not apply:
- (1) to an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**; or
 - (2) to the extent that an **Insured** would have been liable in the absence of the express contract or agreement.

With respect to this EXCLUSION (F), an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language;

- (G) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged failure by any **Insured** to comply with any law, rule or regulation concerning workers' compensation, unemployment insurance, Social Security or disability benefits, whether or not such failure to comply is willful;
- (H) for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**, or for the return to any employer of any contributions if such amounts are or could

be chargeable to a **Plan**; however, this EXCLUSION (H) shall not apply to the Insurer's obligations, subject to the applicable Limit of Liability, to pay **Defense Expenses** resulting from such **Claim**;

- (I) made by or on behalf of a fidelity insurer against a natural person whose conduct has resulted in a **Loss** which has been paid under a fidelity bond; or
- (J) based upon, arising out of, directly or indirectly resulting from any discrimination, retaliation or wrongful termination of employment, other than **Claims** asserted under Section 510 of ERISA.

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS.

IV. CONDITIONS

(A) MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)

- (1) If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger (each an "Acquired Entity") such that the **Company** is the surviving entity (a "Transaction"):
 - (a) there will be coverage available under this Coverage Part for any **Claim** made against the Acquired Entity, its **Pension Benefit Plans**, its **Welfare Benefit Plans**, and its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Act** committed or allegedly committed after the effective date of the Transaction for a period of ninety (90) days after the effective date of the Transaction (not to exceed the Policy Expiration Date);
 - (b) there will be no coverage available under this Coverage Part for any **Claim** made against the Acquired Entity, its **Pension Benefit Plans**, its **Welfare Benefit Plans**, or its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Act** committed or allegedly committed after the effective date of the Transaction beyond the ninety (90) day period, unless:
 - (i) the assets of the Acquired Entity's **Pension Benefit Plans** are less than thirty-five percent (35%) of the total assets of the **Company's Plans** at the time immediately preceding the Transaction; and
 - (ii) the **Named Insured** gives the Insurer written notice, with full details, of the Transaction within the ninety (90) day period;
 - (c) there will be no coverage available under this Coverage Part for any **Claim** made against the Acquired Entity, its **Pension Benefit Plans**, its **Welfare Benefit Plans**, or its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Acts** committed or allegedly committed before the effective date of the Transaction.
- (2) If, during the **Policy Period**, any of the following events occurs:
 - (a) the merger or acquisition of the **Company**, or of all or substantially all of its assets by another entity such that that the **Company** is not the surviving entity;
 - (b) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote for, select or appoint more than fifty percent (50%) of the directors, trustees, members or board of management of the **Company**;

- (c) the appointment of a Receiver, Conservator, Liquidator, Trustee, Rehabilitator, or any comparable authority, with respect to the **Company**; or
- (d) the sale, spin-off, or termination of any **Plan**;

coverage under this Coverage Part will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to any **Claims** for **Wrongful Acts** committed after such event. Immediately upon the consummation of any such event the entire premium for this Coverage Part will be deemed fully earned.

- (3) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Coverage Part shall continue to apply to the **Insureds** that were covered under this Coverage Part but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Named Insured**.

V. RECOURSE

It is agreed that, in the event an **Insured** breaches a fiduciary obligation under ERISA, the Insurer has the right of recourse against any such **Insured** for any amount paid by the Insurer as a result of such breach of fiduciary duty, but the Insurer shall have no such right of recourse if the Policy has been purchased by the fiduciary or by an employer or an employee organization.

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