

I. Insuring Agreements

A. Fiduciary Liability

We will pay on behalf of you all **Loss** for which you become legally obligated to pay on account of a **Claim** first made against you during the **Policy Period** or the Extended Reporting Period, if exercised, for a **Wrongful Act**.

B. Voluntary Compliance Resolution Programs

We shall pay on behalf of the **Insured** any **Voluntary Agreement** and **Defense Costs** which the **Insured** becomes legally obligated to pay resulting from a **Voluntary Compliance Resolution Program Notice** first given to us during the **Policy Period**, provided such **Voluntary Agreement** and **Defense Costs** are incurred after such **Voluntary Compliance Resolution Program Notice** is first given to us. The maximum sublimit of liability under this section for all covered **Voluntary Agreements** and **Defense Costs**, combined, shall be the Voluntary Compliance Program Costs Sublimit of Liability set forth in the Declarations.

II. Definitions

A. "Administration" means:

1. Advising, counseling or providing notice to employees, beneficiaries or **Sponsored Plan** participants with respect to any **Sponsored Plan**;
2. Providing interpretations with respect to any **Sponsored Plan**;
3. Handling records in connection with any **Sponsored Plan**; or
4. Enrolling, terminating or canceling employees, beneficiaries or participants under any **Sponsored Plan**.

B. "Benefits" means any obligation under a **Sponsored Plan** to a participant or beneficiary of a **Sponsored Plan** to make a payment of money or property or to grant a privilege or perquisite.

C. "Claim" means:

1. A written demand against the **Insured** for monetary damages or non-monetary (including injunctive) relief, including a written demand to toll or waive a statute of limitations;
2. A civil, administrative, regulatory or arbitration proceeding against the **Insured** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;
3. A civil proceeding or formal investigation brought by the United States Department of Labor, the United States Pension Benefit Guaranty Corporation or any similar federal, state or local governmental body, including any appeal therefrom;

4. A written demand or request for arbitration, mediation, or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand; or
5. A fact-finding investigation by or on behalf of the Employee Benefits Security Administration ("EBSA"), Pension Benefit Guaranty Corporation or similar Regulatory Body of the **Insured** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured** of a target letter or formal investigative order.

D. "**Defense Costs**" means that part of **Loss** consisting of expenses, including attorneys' fees and experts' fees, incurred in the investigation, defense or appeal of a **Claim**.

Defense Costs include the premium for any appeal, attachment or similar bond, provided that we have no obligation to issue such bond.

Defense Costs does not include any compensation, benefit expenses, or any of the **Insured's** overhead.

E. "**Employee Benefit Plan Law**" means any law that regulates **Sponsored Plans**, including the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), the United Kingdom's Pension Scheme Act 1993 or Pensions Act 2004, or Canada's Pension Benefit Standards Act, 1985, or any Similar Law.

F. "**Insured**" means:

1. You;
2. **Named Insured**;
3. **Team Member**; or
4. Any **Sponsored Plan**.

G. "**Loss**" means damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and **Defense Costs** incurred by the **Insured** on account of any **Claim**.

Loss includes:

1. Punitive, exemplary, or multiplied damages;
2. The five percent (5%) or less or the twenty percent (20%) or less civil penalties imposed under §502(i) or (l) of ERISA;
3. Civil penalties imposed upon the **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, provided that the maximum aggregate sublimit of liability available for all such civil money penalties under the Fiduciary Liability **Coverage Part** shall be the Sublimit of Liability set forth in the Declarations for Penalties for Violations of HIPAA Privacy Provisions;
4. The civil penalties imposed upon the **Insured** under the Pension Protection Act of 2006, provided that the maximum aggregate sublimit of liability under this Fiduciary Liability **Coverage Part** available for all such civil penalties shall be the Sublimit of Liability set forth in the Declarations for Penalties under the Pension Protection Act of 2006;

5. The fifteen percent (15%) or less tax penalty imposed upon the **Insured** under Section 4975 of the Internal Revenue Code of 1986, provided that the maximum aggregate liability under this Fiduciary Liability **Coverage Part** available for all such penalties shall be the Sublimit of Liability set forth in the Declarations for Penalty under IRC Section 4975;
6. The civil penalties imposed upon the **Insured** as a fiduciary under Section 502(c) of ERISA, other than penalties under the Pension Protection Act, provided that the maximum aggregate sublimit of liability under this Fiduciary Liability **Coverage Part** for all such civil penalties shall be the Sublimit of Liability set forth in the Declarations for Penalties under Section 502(c) of ERISA;

Loss, other than **Defense Costs**, does not include:

1. Any amount not indemnified by the **Named Insured** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
 2. Taxes, fines or penalties imposed by law, other than penalties expressly referenced above;
 3. Matters uninsurable under the laws pursuant to which this Policy is construed;
 4. Amounts owed by the **Insured** to any **Sponsored Plan**, including but not limited to participant contributions that the **Insured** failed to collect;
 5. Benefits due or to become due under any **Sponsored Plan**;
 6. Benefits which would be due under any **Sponsored Plan** if such **Sponsored Plan** complied with all applicable law;
 7. That portion of any settlement or judgement which constitutes such benefits, except to the extent that recover for such benefits as a personal obligation of any **Team Member**; or
 8. Amounts which constitute the return or reversion to the **Named Insured** of any contribution or asset of any **Sponsored Plan**.
- H. "**Sponsored Plan**" means individually and collectively, any employee welfare, pension, or benefit plan established anywhere in the world that is sponsored solely by you or any **Subsidiary** or jointly by you or any **Subsidiary** and a labor organization solely for the benefit of your or such **Subsidiary's** employees; but **Sponsored Plan** does not include any multiemployer plan or employee stock ownership plan
- I. "**Team Member**" means any:
1. **Executive**; or
 2. **Employee**.

Team Member also includes any natural persons who were, now are, or shall become a trustee, director, officer, or employee of a **Sponsored Plan**.

- J. "**Voluntary Agreement**" means any fees, fines or penalties paid by the **Insured** to a governmental authority pursuant to a **Voluntary Compliance Resolution Program** for the actual or alleged inadvertent non-compliance by a **Sponsored Plan** with any statute, rule or regulation; provided, however, that **Voluntary Agreement** does not include:

- I. Any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or
 - II. Any fees, fines or penalties relating to a **Sponsored Plan** which, as of the earlier of the inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by us of which this Policy is a direct or indirect renewal or replacement, any **Team Member** knew to be actually or allegedly non-compliant.
- K. “**Voluntary Compliance Resolution Program**” means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.
- L. “**Voluntary Compliance Resolution Program Notice**” means prior written notice to us by the **Insured** of the **Insured’s** intent to enter into a **Voluntary Agreement**.
- M. “**Wrongful Act**” means any actual or alleged act, error or omission:
- 1. By the **Insured** in the discharge of the **Insured’s** duties as, or by reason of the **Insured’s** status as, fiduciaries of any **Sponsored Plan**;
 - 2. Committed or attempted by the **Insured** in the **Administration** of a **Sponsored Plan**;
 - 3. By the **Insured** in the **Insured’s** settlor capacity with respect to any **Sponsored Plan**;

III. Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this Exclusions, the **Wrongful Act** or knowledge of any **Team Member** shall not be imputed to any other **Team Member**, and only the **Wrongful Act** or knowledge of the Chief Executive Officer or functionally equivalent (1) of the **Named Insured** shall be imputed to the **Named Insured**, and (2) of a **Sponsored Plan** shall be imputed to such **Sponsored Plan**.

This policy does not apply to and we will not make any payment for any **Claim** expenses, damages, **Loss**, regulatory penalties, or any other amounts directly or indirectly arising out of, resulting from, based upon, or attributable to:

A. Benefits

Benefits; except that this exclusion does not apply:

- 1. to **Defense Costs** arising from such **Claim**; or
- 2. to any **Claim** alleging that such Benefits are payable as a personal obligation of a **Team Member** for a **Wrongful Act** on account of a **Wrongful Act** by an **Insured** that caused or contributed to a reduction or loss in the value of assets held by a **Sponsored Plan** or in any participant’s account.

B. Bodily Injury & Property Damage

1. for Bodily Injury, except that this exclusion does not apply to any **Claim** arising from an actual or alleged denial or delay of any healthcare benefit under a **Sponsored Plan** by any third-party administrator of such **Sponsored Plan** or from the selection of any third-party administrator of any healthcare **Sponsored Plan**; or
2. for damage to or destruction of any tangible property or electronic data, including loss of use of any such property or data whether or not it is damaged or destroyed.

C. Illegal Profit or Conduct

Based upon or arising out of any willful violation of any statute or regulation or any deliberately fraudulent or criminal act, error, or omission committed by the **Insured**; provided that the Insurer will provide a defense and pay **Defense Costs** unless or until such conduct is evidenced by a final and non-appealable adjudication adverse to the **Insured** in the underlying action. For the purpose of applying this exclusion:

1. the acts, errors, or omissions of any **Named Insured** or **Team Member** will not be imputed to any other **Team Member** or **Sponsored Plan**; and
2. the acts, errors, or omissions of the Chief Executive Officer or Functionally equivalent will be imputed to the **Named Insured**.

D. Prior Notice

Based upon, arising out of, or attributable to any fact, circumstance, or **Wrongful Acts** that, before the inception date of this Policy, was the subject of any notice given and accepted under any prior fiduciary liability or comparable insurance policy.

E. Contractual Liability

Based upon, arising out of, or attributable to any liability under any written contract or agreement, provided this exclusion shall not apply to:

1. The extent that liability would have been incurred in the absence of such contract or agreement;
2. The liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Sponsored Plan** was established; or
3. **Defense Costs**.

IV. Additional Conditions

A. Other Insurance

Coverage under this **Coverage Part** shall apply only in excess of any other valid and collectible insurance, unless such other insurance is written specifically excess of this **Coverage Part** by reference to this Policy's Policy Number.

B. Non-Rescission

We shall not have the right to rescind this **Coverage Part**.