
FIDUCIARY LIABILITY INSURANCE COVERAGE FORM

THIS POLICY PROVIDES LIABILITY COVERAGE ONLY ON A **CLAIMS MADE AND REPORTED BASIS**. TO BE COVERED, A LIABILITY CLAIM MUST BE BOTH FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.

ALL LIABILITY COVERAGES INCLUDE CLAIM EXPENSES WITHIN THEIR LIMITS OF LIABILITY, AND OUR PAYMENTS OF CLAIM EXPENSES REDUCE THE LIMITS OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the **Named Insured** shown on the Declarations Page. The words “we,” “us” and “our” refer to the **Company** providing this insurance as shown on the Declarations Page.

Words and phrases that appear in bold have special meaning. Refer to **SECTION II – DEFINITIONS**. Headings are included for convenience only and shall not affect the construction or interpretation of any of the Policy provisions.

SECTION I - INSURING AGREEMENT

A. Fiduciary Liability

The **Company** will pay on behalf of an **Insured** all **Damages** and **Claim Expenses** in excess of the Deductible that the **Insured** becomes legally obligated to pay arising out of a **Wrongful Act** committed by an **Insured** provided:

1. The **Claim** is both first made against the **Insured** and reported to the **Company** in writing during the **Policy Period** or **Extended Reporting Period**, if any, in accordance with **SECTION V – NOTICE AND CONDITIONS** of this Policy; and
2. Prior to the Effective Date of this Policy, or the beginning of any prior policy of which this Policy is a renewal policy issued by us or an affiliated company, no **Insured** reported facts, circumstances, situations, transactions, or events related to the **Claim** to another insurer; and
3. No **Executive Officer** was aware of or could have reasonably foreseen that facts, circumstances, situations, transactions, or events related to the incident might have resulted in a **Claim**.

The most we will pay for all **Damages** and **Claim Expenses** is set forth on the Declarations Page.

B. Voluntary Compliance Program

The **Company** will pay on behalf of the **Insured** all **Voluntary Compliance Costs** and **Claim Expenses** that the **Insured** incurs in excess of the Deductible, up to the **Voluntary Compliance Costs** Sublimit shown on the Declarations Page for which a **Voluntary Compliance Notice** is first provided to us during the **Policy Period**.

SECTION II – DEFINITIONS

Whenever specially defined terms are used in the Coverage Part, they will be printed in boldface type and shall have the meanings indicated below.

A. Administration

1. Advising, counseling or providing notice to **Employees**, participants or beneficiaries of **Plans**;
2. Determining or calculating benefits or eligibility for benefits or providing information or interpretation to **Employees**, participants or beneficiaries with respect to eligibility for or scope of **Plans**;
3. Handling records in connection with the **Plans**; or
4. Effecting, continuing or terminating any **Employee's** participation in any benefit included in a **Plan**.

B. Automatic Extended Reporting Period

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled or expires and ending at the earliest of the following dates:

1. Sixty (60) days after such cancellation or expiration takes effect;
2. The date any other policy obtained by the **Named Insured** that provides similar coverage takes effect; or
3. The date any **Insured's** license is revoked, suspended by, or surrendered at the request of any regulating authority for any reason.

C. Benefits

Any obligation that is due to any participant or beneficiary under an **Employee Benefit Plan** in the form of a payment of money or property or to grant a privilege, right, option or perquisite.

D. Bodily Injury

Physical injury, sickness, disease, or death of any person.

E. Claim

1. A written demand for monetary damages or non-monetary relief, including injunctive relief, other than an initial application for benefits;
2. A civil proceeding against any **Insured** commenced by receipt of a complaint or similar pleading;
3. A criminal proceeding against any **Insured** commenced by a return of an indictment;
4. A formal administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges. **Claim** also means a formal investigative order by the Department of Labor or Pension Benefit Guaranty Corporation or any governmental authority equivalent that is located outside of the United States, including the United Kingdom's Pensions Ombudsman or Pensions Regulator;
5. An official request for extradition of an **Insured** to another country for trial or otherwise to answer any criminal accusation, or the execution of a warrant for the arrest of an **Insured** where such execution is an element of extradition;
6. An arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar proceeding;
7. A written request to toll or waive a statute of limitations relating to a potential **Claim** described in 1. through 6.; or
8. A **Voluntary Compliance Program Notice**.

F. Claim Expenses

1. Reasonable and necessary fees charged by any lawyer designated by the **Company**;
2. Any third party legal and professional expenses (including disbursements) reasonably incurred in the defense of **Claims** or circumstances which could reasonably be expected to give rise to a **Claim** or in quashing or challenging the scope of any injunction, subpoena, or witness summons;
3. All reasonable and necessary fees and expenses charged by any lawyers selected by the **Insured** as independent counsel, where a conflict of interest exists, and applicable law permits the **Insured** to select such independent counsel and requires the **Company** to pay for such independent counsel;
4. All other fees, costs and expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim**, including **Post-Judgment Interest**; and
5. Premiums on appeal bonds and premiums on bonds to release attachments in such suits, but not for bond amounts in excess of the applicable Limits of Liability of this Policy. The **Company** shall have no obligation to pay for or furnish any bond.

However, **Claim Expenses** does not include the salary, expenses, or wages of any **Insured** or any director, officer, shareholder, member, partner, associate, or **Employee** of the **Named Insured**.

G. Company

The entity issuing this Policy as shown on the Declarations Page.

H. Computer System

Computer, hardware, software, communications system, electronic device (including, but not limited to, any smart phone, laptop, tablet, or wearable device), server, cloud or microcontroller, including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

I. Damages

1. Any of the following that an **Insured** is legally obligated to pay under **SECTION I – INSURING AGREEMENT**, Paragraph **A. Fiduciary Liability**:
 - a. Compensatory awards or judgments, including **Prejudgment Interest** and **Post-Judgment Interest**;
 - b. Monetary settlements;
 - c. Claimant's attorney fees awarded by a court pursuant to Section 502(g) of **ERISA**;
 - d. The 5% or less, or 20% or less, civil penalty imposed upon an **Insured** under Section 502(i) or (l), respectively, of **ERISA**;
 - e. Civil penalties imposed upon an **Insured** under Section 502(c) of **ERISA** as amended;
 - f. Civil penalties imposed under the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA) as amended;
 - g. Civil penalties imposed against an **Insured** for inadvertent violations of the Patient Protection and Affordable Care Act (PPACA) or the Health Care and Education Reconciliation Act of 2010, all as amended. However, PPACA Penalties shall not include civil money penalties imposed on any **Insured** pursuant to Section 4980H of the Internal Revenue Code;
 - h. The 15% or less tax imposed upon an insured under Section 4975 of the Internal Revenue Code, as amended;
 - i. Civil penalties imposed upon an **Insured** under the Pension Protection Act of 2006.
2. Any **Voluntary Compliance Costs**, but solely for purposes of **SECTION I – INSURING AGREEMENT**, Paragraph **B. Voluntary Compliance Program**, subject to the **Voluntary Compliance Costs** Sublimit shown on the Declarations Page.

3. Damages does not include:

- a. Taxes, fines or penalties imposed by law, punitive, exemplary or multiple damages or any fines or penalties assessed under any statute or regulation;
- b. **Benefits** due and owing under any **Plan**, or that portion of any settlement or judgment which constitutes such benefit:
 - (1) Except to the extent that such **Benefits** are payable as a personal obligation of an **Insured** and result from a covered **Wrongful Act**; or
 - (2) Unless a **Claim** made against an **Insured** alleges a **Loss** to the **Plan** and/or to such participants' accounts by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as **Benefits** or held by a court as **Benefits**.
- c. Any amounts that are uninsurable under the law pursuant to which this Coverage Part shall be construed;
- d. Restitution, disgorgement, unjust enrichment or any profits or advantage the **Insured** was not legally entitled to; or
- e. The cost to comply with any order or agreement to provide any equitable relief, including injunctive relief or other nonmonetary relief.

J. **Employee**

Any full-time or part-time employee (including any leased or temporary employee or any volunteer), but only while in the course of their performance of work or services on behalf of or at the direction of the **Named Insured**.

K. **Employee Benefit Plan**

- 1. Means one or more of the following plans sponsored, established and maintained solely by the **Named Insured** or any **Subsidiary** or in conjunction with a labor organization in each case solely for the benefit of any past or present **Employees** or **Executive Officers** of the **Named Insured** or any **Subsidiary**:
 - a. Any employee benefit, welfare or pension plan as defined by **ERISA**;
 - b. Any benefit plan not subject to **ERISA** including any Health Savings Account (HSA) plan, fringe benefit or excess benefit plan; or
 - c. Any other **Employee Benefit Plan**, fund or program that is listed in the Schedule attached to this Coverage Part by endorsement.
- 2. Does not include any multi-employer plan, or any employee stock ownership plan as defined by **ERISA**, unless such plan is added by endorsement to this Policy, or any government mandated insurance program for unemployment insurance, social security benefits or disability benefits.

L. ERISA

The Employee Retirement Income Security Act of 1974, including any amendments thereto and any rules and regulations promulgated thereunder.

M. Extended Reporting Period

The additional period of time for reporting **Claims** as set forth in, and pursuant to the terms and conditions of **SECTION VI – EXTENDED REPORTING PERIOD** of this Policy.

N. Executive Officers

Any natural person who was, is now or will be a duly elected or appointed director, officer, trustee or manager of any **Insured** incorporated in the United States of America. If the **Insured** operates outside of the United States of America, the term **Executive Officers** applies to any person serving in an equivalent position.

O. Insured

Each of the following is an **Insured** under this Policy to the extent described below:

1. The **Named Insured**;
2. Any **Subsidiary**;
3. Any **Employee Benefit Plan**;
4. Any **Executive Officer** or **Employee** of a **Plan**;
5. Any person in the capacity of a fiduciary or settlor of any **Employee Benefit Plan**;
6. Any person that handles the **Administration** of any **Plan**; or
7. The member of any committee which oversees the administration of a **Plan** or investments of an **Employee Benefit Plan**;

P. Named Insured

The individual, corporation, partnership, limited liability company, limited partnership, or other entity designated as such on the Declarations Page.

Q. Optional Extended Reporting Period

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled or expires and ending at the earliest of the following dates:

1. The expiration date specified in the applicable **Optional Extended Reporting Period** Endorsement;

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2. The date any **Insured's** license is revoked, suspended by, or surrendered at the request of any regulating authority for any reason other than the **Insured** is totally and permanently disabled; or
 3. When the Limits of Liability have been exhausted.

R. Plan

Any government-mandated insurance program for unemployment insurance, social security benefits or disability benefits or any **Employee Benefit Plan**.

S. Policy Period

The period from the Effective Date of this Policy to the Policy Expiration Date as shown on the Declarations Page or its earlier termination date, if any.

T. Post-Judgment Interest

Interest added to a verdict, award or judgment based on the amount of time accruing after the verdict, award, or judgment.

U. Prejudgment Interest

Interest added to a verdict, award or judgment based on the amount of time accruing prior to the verdict, award, or judgment, but only as respects that part of the judgment which does not exceed the Limit of Liability thereof.

V. Property Damage

Any injury to or destruction of any tangible property or loss of use therefrom. Tangible property does not include currency or negotiable instruments.

W. Related Wrongful Act

Wrongful Acts which are logically and causally connected by reason of any fact, circumstance, situation, event, transaction, or decision.

X. Sanctioned Country

Any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

Y. Sexual Misconduct or Sexual Molestation

Any activity which is sexual in nature (whether permitted or not permitted); and includes, but is not limited to: sexual assault, sexual battery, sexual relations, sexual acts, sexual activity, sexual handling, sexual massage, sexual exploitation, sexual exhibition, sexual stimulation, fondling, intimacy, exposure of sexual organs, lewd or lascivious behavior or indecent exposure, fornication, unauthorized touching, or the photographic, video or other reproduction of sexual activity. **Sexual Misconduct or Sexual Molestation** includes physical abuse.

Z. Specially Designated National or Blocked Person

Any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the United States Treasury Department's Office of Foreign Asset Control (OFAC) as it may be from time to time amended.

AA. Subsidiary

Any entity identified as a **Subsidiary** on the **Application**, but only if the **Named Insured**:

1. Owns, directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting stock of such entity;
2. Has the right to elect, appoint or designate more than fifty percent (50%) of such entity's board of directors, trustees, or managers; or
3. Has majority control over the management and operations of the entity through a written agreement.

An entity or organization consisting of net assets, provided such entity was created or acquired by the **Named Insured**, either directly or indirectly, before the end of the **Policy Period**.

BB. Voluntary Compliance Costs

Any fees, fines, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that an Insured becomes legally obligated to pay as a result of a **Wrongful Act**.

CC. Voluntary Compliance Program Notice

Any prior written notice given to the **Company** by an **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

DD. Voluntary Compliance Program

Any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States of America, including:

1. The Employee Plans Compliance Resolution System consisting of the Self-Correction Program, the Voluntary Compliance Resolution Program and the Audit Closing Agreement Program set forth in IRS Revenue Procedure 2003-44; and
2. The Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program administered by the Department of Labor.

EE. Wrongful Act

1. Any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty of an **Insured** in the capacity as a fiduciary for any **Employee Benefit Plan**.
2. Any actual or alleged act, error or omission committed by an **Insured** in the **Administration** of a **Plan**; or

3. Any actual or alleged act, error or omission committed by an **Insured** in the capacity as a settlor for any **Employee Benefit Plan**.

SECTION III - LIMITS OF LIABILITY AND DEDUCTIBLE

A. Fiduciary Limit of Liability

The maximum amount of the **Company's** liability under this Coverage Part pursuant to the terms and conditions of **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE** is the Fiduciary Limit of Liability shown on the Declarations Page for **Damages** and **Claim Expenses** for all **Claims**. The Fiduciary Limit of Liability shown on the Declarations Page applies to each **Claim** and in the aggregate.

B. Voluntary Compliance Costs Sublimit

As respects coverage provided under **SECTION I – INSURING AGREEMENT**, Paragraph **B. Voluntary Compliance Costs** Sublimit, the maximum amount of the **Company's** liability for **Voluntary Compliance Costs** is the **Voluntary Compliance Costs Sublimit** shown on the Declarations Page for which a **Voluntary Compliance Notice** is first provided to us during the **Policy Period**. The **Voluntary Compliance Costs Sublimit** shown on the Declarations Page for this Coverage Part is part of, not in addition to, the Fiduciary Limit of Liability.

C. Additional Limit for Claim Expenses

If an Additional Limit for Claim Expenses is shown on the Declarations Page, the **Insured** is entitled to such additional amount for the payment of **Claim Expenses** for all covered **Claims** up to, but not exceeding, the amount shown on the Declarations Page as the Additional Limit for Claim Expense. This limit is in addition to the Fiduciary Limit of Liability as set forth above; provided, however, if no Additional Limit for Claim Expenses is shown on the Declarations Page, then this subparagraph shall not apply and the Fiduciary Limit of Liability Policy shall apply to all **Damages** and **Claim Expenses**.

Any **Claim Expenses** incurred shall apply first to, and shall reduce, the Additional Limit for Claim Expenses. If the Additional Limit for Claim Expenses is exhausted by the payment of **Claim Expenses**, then **Claim Expenses** shall apply to the remaining applicable Fiduciary Limit of Liability until the exhaustion of such limit.

D. Multiple Claimants and Related Claims

The Limits of Liability shown on the Declarations Page is the amount the **Company** will pay as **Damages** and **Claim Expenses** regardless of the number of **Claims** made or persons or entities making such **Claims**. All **Claims** based upon or arising out of the same **Wrongful Act** or **Related Wrongful Acts** shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:

1. When the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** was first made; or
2. When Notice of Circumstances is given in accordance with Paragraph **A.** of **SECTION V – NOTICE AND CONDITIONS** of a fact, circumstance or situation giving rise to such **Claim**.

E. Deductible

The Deductible amount as shown on the Declarations Page shall be paid by the **Named Insured** and shall apply to each and every **Claim**. The **Company** shall only be liable for the amount of **Damages** or **Claim Expenses** arising from a **Claim** which is in excess of the Deductible amount as shown on the Declarations Page. Such amounts shall, upon written demand by the **Company** to the **Named Insured**, be paid within thirty (30) days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Company** shall serve to reduce the limits of liability.

If the **Company** brings suit to collect the Deductible, or any part thereof, and prevails therein, then the **Named Insured** shall also pay the legal fees, costs and expenses incurred by the **Company** in such suit.

F. Multiple Insurance Policies

In the event a **Claim** is deemed, either by the **Company** or a court of competent jurisdiction, to be covered under more than one Policy of Insurance or Coverage Form issued by the **Company** or an affiliated company, it is expressly understood and agreed that the maximum aggregate Limit of Liability for such **Claim** shall not exceed the highest applicable Per Claim Limit of Liability –as shown on each Policy’s respective Declarations Page, and only the Policy with the highest applicable Per Claim Limit of Liability –shall apply.

G. Liability Coverages Policy Aggregate Limit

The Limit of Liability of the **Company** for **Damages** or **Claim Expenses** for all liability coverages afforded under this Policy shall not exceed the amount as shown on the Declarations Page as the Liability Coverages Policy Aggregate Limit.

H. Exhaustion of Limits of Liability

The Limit of Liability of the **Company** for **Damages** or **Claim Expenses** for all liability coverages afforded under this Policy, shall not exceed the amount as shown on the Declarations Page as the Liability Coverages Policy Aggregate Limit.

The **Company** shall not be obligated to pay **Damages** or **Claim Expenses** or defend or continue to defend any **Claim**, or **Claims**, after the applicable Fiduciary Limit of Liability as shown on the Declarations Page has been exhausted by payment of **Damages** or **Claim Expenses**.

SECTION IV – EXCLUSIONS

This insurance does not apply to any **Claim**, costs, **Damages** or **Claims Expenses** based upon, arising out of, directly or indirectly resulting from, or in any way connected with any of the following, whether actual or alleged:

A. Known or Reported Wrongful Acts

Any **Wrongful Act** occurring prior to the **Policy Period** if, prior to the Effective Date of the first Fiduciary Liability Insurance Policy issued by the **Company** to the **Named Insured** which has been continuously renewed and maintained in effect to the Effective Date of this Policy:

1. An **Insured** knew or should have known that such **Wrongful Act** might reasonably be expected to result in a **Claim**; or
2. An **Insured** gave notice of such **Wrongful Act** to a prior insurer.

B. Prior or Pending Litigation

Based upon, arising out of or attributable to:

1. Any **Claim**, administrative or regulatory proceeding or investigation filed or commenced against any **Insured** on or prior to the Effective Date shown on the Declarations Page; or
2. The same or substantially the same **Wrongful Act**, fact or circumstance alleged in or underlying such **Claim** or proceeding.

C. Expected or Intended

Any acts or omissions that any **Insured** expected or intended to cause injury or damage.

D. Dishonesty or Fraud

Any dishonest, fraudulent, criminal, or malicious act, error or omission committed by or at the direction of any **Insured** or which is ratified by any **Insured**; provided, however, that:

1. The **Company** shall provide a defense for such **Claim** unless and until the dishonest, fraudulent, criminal, or malicious act, error or omission has been determined by a trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not, or there has been an admission by an **Insured** establishing such dishonest, fraudulent, criminal or malicious act, error or omission; and
2. Such defense will not waive any of the **Company's** other rights under this Policy.

INNOCENT INSURED PROVISION. This exclusion shall not apply to any **Insured** who did not personally participate in, acquiesce in, or ratify the dishonest, fraudulent, criminal, or malicious act, error, or

omission; provided, however, that this INNOCENT INSURED PROVISION does not apply to, or inure to the benefit of, the **Named Insured**.

E. Bodily Injury or Property Damage

Any **Claim** based upon, arising out of or in any way attributable to **Bodily Injury** or **Property Damage**.

F. Breach of Warranty or Guaranty

Any breach of contract or agreement or the assumption of any liability, including any provision to provide or extend any defense costs, in a contract or agreement; provided, however, this exclusion shall not apply to liability of the **Insured Entity** or **Insured Person** that would have attached in the absence of such contract or agreement.

G. Multiplication of Damages

Punitive damages, exemplary damages, treble damages, the multiplication of compensatory damages in whatever form assessed, or matters which may be deemed uninsurable under applicable laws.

H. Employment Practices

Any employment-related practices, policies, acts, or omissions committed by an **Insured**, including but not limited to, refusal to hire, termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination.

This exclusion applies regardless of whether the **Insured** may be liable as an employer or in any other capacity or may be obligated to share **Damages** with or repay someone else who must pay **Damages** because of the loss, damage, or injury.

I. Wage, Hour and Compensation Violations

1. Based upon, arising out of or attributable to any actual or alleged violation of the Fair Labor Standards Act (FLSA), including any amendments thereto or any rules or regulations promulgated thereof, or any similar foreign, federal, state or local statute, rule or regulation, including any statute, rule or regulation that governs wage, hour and payroll policies and practices; or
2. Based upon, arising out of or attributable to:
 - a. The failure of any **Insured** to pay wages or overtime pay, including the failure to compensate for any unpaid off the clock or remote work or for any employer-sponsored activities;
 - b. Any improper calculation of overtime pay, maintenance of records relating to wages earned or hours worked, improper deductions from pay, the improper classification of **Employees** as exempt or nonexempt or as independent contractors or the failure to provide or enforce any legally required rest breaks, meal breaks or rest days;
 - c. The misuse of federal or state tip credits or the establishment or maintenance and distribution of tip pools; or

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- d. The failure to reimburse any work-related expense to any **Insured** person or any other natural person providing services or labor to or on behalf of the organization.

J. **Sexual Misconduct or Sexual Molestation**

Any actual or alleged **Sexual Misconduct or Sexual Molestation**, including but not limited to physical acts or oral statements of a sexually suggestive nature or unwelcome physical contact. This exclusion applies even if the **Claim** alleges negligence or other wrongdoing in respect of hiring, training, or supervising any person; failing to provide a safe environment; investigating or failing to investigate any incident; or reporting or failing to report any person or matter to the proper authorities.

K. **Prior Subsidiaries**

Should an entity cease to be a **Subsidiary** after the Effective Date, cover in respect of the entity will continue as if it was still a **Subsidiary** during the **Policy Period**, but only in respect of an act, error, omission, or event occurring prior to the date that it ceased to be a **Subsidiary**.

L. **Conversion or Embezzlement**

The conversion, defalcation, embezzlement, misappropriation, commingling or other intentional or illegal use of funds, money, or property by an **Insured**, including but not limited to client funds held by an **Insured**.

M. **Data and Privacy**

1. Any loss or theft of, disclosure of, or unauthorized access to or use of, any person's or entity's private or confidential information, no matter the cause;
2. Any unauthorized access to a **Computer System**, no matter the cause;
3. Any use of authorized access to cause intentional harm to a **Computer System**;
4. Any actual or threatened ransomware or denial-of-service attack against a **Computer System**;
5. Any introduction of malicious code into a **Computer System**;
6. Failure to provide an authorized user with access to a **Computer System**;
7. Any release of data or information, or provision of access to data or information, caused by fraud or trickery;
8. Any violation of law regarding the protection, use, collection, destruction, disclosure of, loss of, access to, or storage of any person's or entity's private or confidential information;
9. The failure to provide notification required by law in connection with 1. through 8.; or
10. Any action taken or not taken in controlling, preventing, suppressing, or remediating any of the above.

N. Financial or Investment Advice

1. Any financial or investment advice; or
2. Any prediction of future performance, representation, warranty or guarantee regarding a specific or identifiable investment.

O. Misappropriation of Assets

Any actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.

P. U.S. Economic and Trade Sanctions

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this Policy is void ab initio (void from its inception) with respect to any term or condition of this Policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any **Insured**, or any person or entity claiming the benefits of an **Insured**, who is or becomes a **Specially Designated National or Blocked Person** or who is otherwise subject to United States economic or trade sanctions;
2. Any **Claim** or suit that is brought in a **Sanctioned Country** or by the government of a **Sanctioned Country**, where any action in connection with such **Claim** or suit is prohibited by United States economic or trade sanctions;
3. Any **Claim** or suit that is brought by any **Specially Designated National or Blocked Person** or any person or entity who is otherwise subject to United States economic or trade sanctions;
4. Property that is located in a **Sanctioned Country** or that is owned by, rented to or in the care, custody, or control of the government of a **Sanctioned Country**, where any activities related to such property are prohibited by United States economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody, or control of a **Specially Designated National or Blocked Person**, or any person or entity who is otherwise subject to United States economic or trade sanctions.

Q. Workers' Compensation and Similar Laws

Based upon, arising out of or attributable to an **Insured's** obligation under a workers' compensation, disability benefits or unemployment compensation law, or any similar law. This exclusion shall not apply to **Wrongful Acts** in connection with the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability Act of 1986 or any similar foreign, federal, state or local statute, rule or regulation.

SECTION V - NOTICE AND CONDITIONS

A. Notice of Circumstances

If during the **Policy Period** the **Insured** first becomes aware of any **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and if the **Insured** gives written notice to the **Company** during the **Policy Period** of such **Wrongful Act**, with full particulars acceptable to the **Company**, including but not limited to:

1. The specific act, error, or omission;
2. The loss, injury or damage which may result or has resulted from the **Wrongful Act**;
3. The circumstances by which the **Insured** first became aware of the **Wrongful Act**, and the reasons for anticipating, a **Claim**;
4. The dates and persons involved;
5. The identity of likely claimants;

then any such **Claim** that arises out of such reported **Wrongful Act** that is subsequently made against the **Insured** and reported to the **Company** shall be deemed to have been made at the time such written notice was originally given to the **Company**.

B. Notice of Claim

An **Insured** shall give immediate written notice of any and all **Claims** to the **Company** during the **Policy Period** or **Automatic Extended Reporting Period**.

Any **Claim** first reported to the **Company** beyond the **Policy Period** or **Automatic Extended Reporting Period** shall not be covered under this Policy unless the **Claim** is reported pursuant to an applicable **Optional Extended Reporting Period**, if any. In addition, any **Claim** first made against an **Insured** during the **Policy Period** but first reported to the **Company** under a renewal policy issued by the **Company** shall be deemed first made and reported under such renewal policy and this Policy shall not apply.

C. Duties in the Event of a Claim

As a condition precedent to an **Insured's** rights under this Policy, an **Insured** shall:

1. Cooperate fully with the **Company** in the investigation, defense, and settlement of any **Claim**, including but not limited to attending hearings, depositions, and trials, preserving, and obtaining evidence, and giving written statements;
2. Immediately send the **Company** copies of any demand, notices, summonses, and other legal papers received in connection with the **Claim**;
3. Submit to examination and interrogation under oath;

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4. Authorize the **Company** to obtain records and other information; and
 5. Assist in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**.

Under no circumstances shall an **Insured** assume any obligation or incur any **Claim Expenses**, admit liability for any **Claim**, enter into any settlement agreement, stipulate to any judgment, or agree to any arbitration without the prior written consent of the **Company**. Any settlement, **Damages** or **Claim Expenses** incurred and/or agreed to prior to the **Company** giving its written consent shall not be covered under this Policy.

D. Right to Investigate and Appoint Counsel

The **Company** shall have the right but not the duty to investigate any **Claim** or Notice of Circumstance as it deems necessary, or to undertake any investigation with respect to the **Application** as respects coverage. The **Insured** shall submit for examination under oath, by a representative of the **Company**, if requested, in connection with all matters relating to this Policy.

The **Company** shall also have the right but not the duty to appoint legal counsel on behalf of the **Insured** in connection with the defense or handling of any **Claim** or Notice of Circumstance as it deems necessary.

E. Alternative Dispute Resolution

Any dispute arising out of or relating to this Policy, including but not limited to its validity, interpretation, application, and any alleged breach, will first be submitted to mediation administered by Judicial Arbitration & Mediation Services (“JAMS”), or another provider to which the parties agree. The parties will cooperate with one another and the mediation provider in selecting a mediator and in scheduling mediation proceedings and will share equally in the mediation costs. The parties will attempt in good faith to settle the dispute. Each party will bear its own fees and costs in connection with any such mediation, but the costs incurred through the mediation provider, including the fees and expenses of the mediator, will be shared equally by the parties.

If mediation does not result in a settlement, either party may: (1) commence a judicial proceeding; or (2) with the consent of the other party commence an arbitration proceeding in accordance with the commercial arbitration rules of JAMS in effect at the time of dispute. The decision of the arbitrator or arbitrators will be final, and binding and any award may be confirmed and enforced in any court of competent jurisdiction.

F. Consent to Settle

The **Company** shall not settle any **Claim** without the **Named Insured’s** written consent, provided such consent shall not be unreasonably withheld. If however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Company** which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Company’s** liability for **Damages** or **Claim Expenses** relating to such **Claim** shall not exceed the total amount of **Damages** and **Claim Expenses** the **Company** would have paid up to the date of the **Named Insured’s** refusal.

If, prior to institution of arbitration proceedings or service of suit or within sixty (60) days of the institution of such proceedings or service of suit, the **Company** and the **Named Insured** agree to use a process of non-binding intervention by a neutral third party to resolve any **Claim** reported to the **Company**, and if such **Claim** is resolved through such process, the **Company** will reduce the retention applicable to such **Claim** by fifty percent (50%) or ten thousand dollars (\$10,000.00), whichever is less.

G. Rights of Subrogation

In the event of any payment under this Coverage Part, the **Company** shall be subrogated to all of the **Insured's** rights of recovery thereof against any person or entity. The **Insured** must execute and deliver instruments and papers and do whatever else is necessary to secure such rights and must do nothing to prejudice such rights.

Any amount recovered pursuant to subrogation shall be applied as follows: first, to the repayment of expenses incurred in connection with the subrogation; second to **Damages** or **Claim Expenses** paid by an **Insured** in excess of the Limits of Liability; third, to **Damages** or **Claim Expenses** paid by the **Company**; fourth, to **Damages** or **Claim Expenses** paid by the **Insured** in excess of the Deductible; and last, to the repayment of the Deductible.

H. Other Insurance

This insurance shall be primary as respects any other valid and collectible insurance. If there is other valid and collectible insurance that applies to a **Claim**, then the **Insured** shall, as a condition precedent to coverage under this Policy, immediately tender the defense and indemnity of that **Claim** to the insurance carrier providing coverage. This Policy will not be subject to the terms of any other insurance.

I. Sale, Merger, Dissolution or Cessation of the Named Insured's Business

If, during the **Policy Period**, any of the following transactions occur:

1. The **Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Named Insured** is not the surviving entity; or
2. A person, entity or affiliated group of persons or entities obtains (i) ownership or possession of fifty percent (50%) or more of the issued and outstanding capital stock, equity, member units, or any other applicable form of ownership of the **Named Insured**, or (ii) the right to elect or appoint more than fifty percent (50%) of the **Named Insured's** directors, officers or trustees; or
3. The **Named Insured** ceases to do business for any reason;

then coverage under this Policy shall continue in full force and effect until the end of the **Policy Period**, but only as respects to **Wrongful Acts** which occurred prior to the effective date of the transaction.

J. Acquisition of Subsidiary

If, during the **Policy Period**, any **Insured Entity** acquires or creates a **Subsidiary** for which entity there is no other similar insurance available, then during a period of sixty (60) days after the effective date of the transaction or until the end of the **Policy Period**, whichever is earlier, the new **Subsidiary** will

be an **Insured Entity**, but only with respect to a **Wrongful Act** committed by an **Insured** after the effective date of the transaction.

There will be no coverage under this Coverage Part for any **Wrongful Act** committed by the new **Subsidiary**, or for any **Claim** first made after the sixty (60) day period has expired, unless the **Named Insured** has provided the **Company** with written notice of the transaction, containing full details thereof, and the **Company** has agreed to add coverage for the new entity upon such terms, conditions, and limitations of coverage and such additional premium as the **Company**, in its sole discretion, may require.

K. Action Against the Company

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. Bankruptcy or Insolvency

Bankruptcy or insolvency of an **Insured** or an **Insured's** estate shall not relieve the **Company** of any obligations under this Policy.

M. Territory

This Policy applies to an act or omission taking place anywhere in the world, provided that the **Claim** is made, and suit is brought against the **Insured** within any of the fifty (50) states of United States of America or the District of Columbia.

N. U.S. Economic and Trade Sanctions

Whenever coverage provided by this Policy (or any certificates of insurance, binders, or other evidence of insurance) would be in violation of any U.S. economic or trade sanctions, including but not limited to those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control, such coverage shall be null and void. In addition, the **Company** shall have no obligation to make any payments of any kind for any **Claim** which would render the **Company** in violation of any U.S. economic or trade sanction as described above.

SECTION VI - EXTENDED REPORTING PERIOD

A. Automatic Extended Reporting Period

Subject to Paragraph D. and E. of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or is not renewed, an **Automatic Extended Reporting Period** applies without additional premium beginning on the date such Policy is cancelled or expires.

The **Automatic Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Automatic Extended Reporting Period**, but only for **Wrongful Acts** committed wholly prior to the effective date this Coverage Part or the Policy is cancelled or expires, and which otherwise would be covered.

The **Automatic Extended Reporting Period** shall not apply if the **Named Insured** has purchased similar insurance from the **Company** or any other insurer covering such **Claim**.

B. Optional Extended Reporting Period

Subject to Paragraphs D. and E. of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or not renewed, whichever applies, the **Named Insured** may give the **Company** written notice that it desires to purchase an **Optional Extended Reporting Period** for one of the periods shown in the ERP Schedule in Paragraph C. below, subject to the following:

1. Written notice of such election must be provided to and received by the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies. Such notice must indicate the total extension period desired and must include payment of premium for such **Optional Extended Reporting Period**. If such notice is not timely given to the **Company**, the **Named Insured** will not be able to elect such right at a later date.
2. The **Optional Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Optional Extended Reporting Period**, but only for **Wrongful Acts** committed wholly prior to the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies, and which otherwise would be covered.
3. The first sixty (60) days of the **Optional Extended Reporting Period**, if purchased, shall run concurrently with the **Automatic Extended Reporting Period**.

C. Premium Due - Optional Extended Reporting Period

The premium due for the **Optional Extended Reporting Period** equals the percentage amount shown in the ERP Schedule below in relation to the annualized premium for this Coverage Part or the Policy, whichever applies.

ERP Schedule

| <u>ERP</u> | <u>Additional Premium</u> |
|------------|---------------------------|
| 12 months | 100% |
| 24 months | 125% |
| 36 months | 150% |

The entire premium for the **Optional Extended Reporting Period** must be received by the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies, and will be deemed fully earned (even if cancelled upon request of the **Insured**) at the commencement of the **Optional Extended Reporting Period**.

The **Optional Extended Reporting Period** will not take effect unless the **Named Insured** has fulfilled all other duties, and complied with all other terms and conditions, of this Policy, and has fully repaid any Deductible owed to the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires.

D. Elimination of Right to Extended Reporting Period

There is no right to any **Extended Reporting Period** set forth in this **SECTION VI – EXTENDED REPORTING PERIOD** if:

1. The **Company** cancels or refuses to renew this Coverage Part or the Policy due to the non-payment of premium or to misrepresentations or omissions in any **Application** used by the **Company** as a basis for issuing this Policy; or
2. The **Named Insured** has not complied with the terms and conditions of this Policy, including but not limited to the prior refusal or inability of the **Named Insured** to pay any outstanding Deductible amounts owed under this Policy.

E. No Additional Limit of Liability for Extended Reporting Period

The **Extended Reporting Period** does not reinstate or increase the Limits of Liability. The Deductible shown on the Declarations Page will apply separately to each **Claim** reported under the **Extended Reporting Period**.
