

OLD REPUBLIC INSURANCE COMPANY

Fiduciary Liability Declarations

IMPORTANT NOTICE

THIS IS A CLAIMS MADE COVERAGE SECTION THAT APPLIES ONLY TO **CLAIMS** FIRST MADE DURING THE **POLICY PERIOD** OR THE **EXTENDED REPORTING PERIOD**, IF EXERCISED. **DEFENSE COSTS** SHALL BE APPLIED AGAINST THE RETENTION, IF APPLICABLE. **DEFENSE COSTS** PAID BY THE INSURER SHALL REDUCE AND MAY COMPLETELY EXHAUST THE LIMIT OF LIABILITY OF THE POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Item 1. **Named Insured:** <NamedInsured>

Item 2. Coverage Section Limits Of Liability:

Aggregate Limit of Fiduciary
Liability (inclusive of **Defense Costs**): \$<maxagg>

Shared Limit of Liability with:
Directors and Officers and Entity Liability ☐ Employment Practices Liability ☐

Item 3. Sublimited Coverage:

- (a) **Voluntary Compliance Program Loss**
and **Defense Costs** Sublimit of Liability: \$<VolCompLossSublimits>
- (b) HIPAA Privacy Penalties Sublimit of Liability: \$<HIPAASublimit>
- (c) Section 4975 Penalties Sublimit of Liability: \$<4975Sublimit>
- (d) 502(c) Penalties Sublimit of Liability: \$<502cSublimit>
- (e) Pension Protection Act Penalties Sublimit of Liability: \$<PPASublimit>
- (f) Affordable Care Act Penalties Sublimit of Liability: \$<ACASublimit>

Item 4. Retentions:

\$<claimretention> per **Claim**

\$<Massactionretention> per **Mass or Class Action Claim**

Item 5. Prior Litigation Date: <PLDATE3>

Item 6. Elected Defense:

Duty to Defend ☐

Reimbursement ☐

Item 7. Forms/Endorsements Effective At Inception:

OLD REPUBLIC INSURANCE COMPANY FIDUCIARY LIABILITY COVERAGE SECTION

TABLE OF CONTENTS

I.	INSURING CLAUSES	2
II.	COVERAGE EXTENSIONS	2
III.	DEFINITIONS	2-7
IV.	EXCLUSIONS	8-9
V.	NOTICE FOR OPTIONAL COVERAGES	9
VI.	COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY, SUBLIMITS, AND RETENTION	9
VII.	CREATION, ACQUISITION, TERMINATION, OR TRANSFER OF A PLAN OR ESOP	9-10
	A. Creation or Acquisition of a Plan	9
	B. Termination, Spin-Off, or Sale of a Plan	9-10
	C. Plan Merger	10
	D. Creation or Acquisition of an ESOP	10
VIII.	DEFENSE OF WAGE AND HOUR LAWS CLAIMS	10
IX.	PRIORITY OF PAYMENTS	10
X.	OTHER INSURANCE	11

OLD REPUBLIC INSURANCE COMPANY

FIDUCIARY LIABILITY COVERAGE SECTION

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Insurer and the **Insureds** agree as follows:

I. INSURING CLAUSES

Fiduciary Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** on account of a **Claim** first made against the **Insureds** during the **Policy Period**, or any applicable **Extended Reporting Period**.

II. COVERAGE EXTENSIONS

Voluntary Compliance Settlement Program

The Insurer shall pay **Voluntary Compliance Program Loss** and **Defense Costs** on behalf of the **Insureds** on account of a **Voluntary Compliance Program Notice** that is first noticed to the Insurer during the **Policy Period**. The Insurer's maximum aggregate liability for all **Voluntary Compliance Program Loss** and **Defense Costs** combined shall be the **Voluntary Compliance Program Loss** and **Defense Costs** Sublimit of Liability set forth in Item 3(a) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability. No Retention shall apply to such amount.

III. DEFINITIONS

When used in this Coverage Section either in the singular or the plural:

Administration means, with respect to any **Plan**: (i) advising, counseling, or giving notice to **Employees**, participants, or beneficiaries; (ii) providing interpretations, or handling of records or effecting enrollment, termination or cancellation of **Employees**, participants, or beneficiaries under the **Plan**; (iii) determining **Employee** vesting of or eligibility for benefits for **Employees**, participants, or beneficiaries; (iv) determining or calculating **Employee** benefits for **Employees**, participants, or beneficiaries; or (v) preparing, filing, or sending any required notices and documents.

Benefits Due mean those benefits that are, or allegedly are, due or become due or to become due under any **Plan**, including any benefits that would be due under any **Plan** if such **Plan** complied with all applicable laws; provided **Benefits Due** shall not include:

- (a) benefits payable as a personal obligation of an **Insured Person** to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by such **Insured Person**; or
- (b) amounts related to or sought to be recovered in a **Claim** alleging: i. loss to a **Plan**; ii. loss in the actual accounts of **Plan** participants; or iii. loss due to a change in value of a **Plan's** investments.

Claim means any:

- (i) written demand (excluding a subpoena, **Inquiry**, **Internal Appeal**, or an initial claim for benefits by an **Employee**, or beneficiaries under the **Plan**) against any **Insured** for monetary damages or non-monetary (including injunctive or declaratory) relief, including a request to

toll or waive a statute of limitations, deemed to be first made upon an **Insured's** initial receipt of such demand;

- (ii) written demand for arbitration, mediation, or other alternative dispute resolution proceeding against any **Insured**, deemed to be first made upon an **Insured's** initial receipt of such demand;
- (iii) proceeding, including any appeal, against any **Insured** commenced by and deemed to be first made by the earlier of:
 - (a) service upon or receipt by an **Insured** of a civil or criminal complaint or such similar pleading;
 - (b) service upon or receipt by an **Insured** of a formal notice of charges or formal order of investigation evidencing the commencement of a formal administrative or formal regulatory proceeding against any **Insured**, including any administrative or regulatory fact finding investigation of any **Insured** by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority located within or outside the United States;
 - (c) the arrest or detainment of an **Insured**; return of an indictment or information or such foreign functional equivalent upon an **Insured**; or the receipt of an official request for **Extradition**; or
- (iv) any investigation by an **Enforcement Authority** of an **Insured Person** in their fiduciary capacity with respect to any **Plan**, commenced by and deemed to be first made by an **Insured Person's** initial receipt of a subpoena, Wells Notice, search warrant, target letter or the functional foreign equivalent from an **Enforcement Authority** identifying such **Insured Person** as the target of an investigation, or as an individual against whom a formal proceeding may be commenced,

against such **Insured** for a **Wrongful Act**, including any appeal therefrom.

Claim shall also include an **Inquiry** or **Internal Appeal** only if the **Insureds** elect to provide to the Insurer written notice pursuant to Section V, Notice for Optional Coverages. **Claim** shall not include any routine or regularly scheduled examinations, inspections, audits, or any industry sweep examination, or general oversight or compliance activity, or any general or informal request for information.

Clean-Up Costs mean any fees, costs, or expenses, including legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, remediating, containing, treating, neutralizing, detoxifying, or assessing the effects of any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, fungi, chemicals, waste, or waste materials to be recycled, reconditioned, or reclaimed.

Committee means any employee benefit committee established by an **Insured Entity** or a **Plan** which consists solely of natural person members who otherwise are **Insured Persons**.

Control Group Officer means the chief executive officer, chief financial officer, **Insurance Manager**, chief benefits director, or such functionally equivalent position, of an **Insured Entity**.

Defense Costs mean reasonable costs, charges, fees, e-discovery costs, and expenses (other than regular or overtime wages, salaries, fees, or benefits associated with any **Insured**); incurred by the **Insureds** with the Insurer's consent, to investigate, adjust, defend, respond to or appeal **Claims**, including the premium for appeal, attachment, or similar bonds but without any obligation of the Insurer to apply for or furnish such bonds. **Defense Costs** shall also include reasonable costs, charges, fees incurred by an **Insured Entity** in the preparation and filing such **Insured's** entry into a **Voluntary Compliance Program**.

Employee means any natural person whose service or labor was, now is, or shall become engaged and directed by an **Insured Entity**, including any part-time, leased, seasonal or temporary employee, intern, or volunteer. **Employee** shall not include an independent contractor.

Enforcement Authority means: (i) any federal, state, local, foreign, or offshore law enforcement authority or other governmental investigative authority including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general; or (ii) the enforcement unit of any securities exchange or other self-regulatory organization.

Enforcement Authority shall not include the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by The Pensions Regulator, or any such successor.

ERISA means the Employee Retirement Income Security Act of 1974 as amended (including any amendments as contained in the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Health Insurance Portability and Accountability Act of 1996) any rule or regulation promulgated under any such act or similar law, and any similar statutory or common law anywhere in the world.

Healthcare Exchange means any public, private, or government-sponsored or controlled entity established to facilitate the purchase of health insurance in accordance with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2011.

Inquiry means any written:

- (i) request, demand, or subpoena by an **Enforcement Authority** to interview or depose, or obtain documents from, an **Insured Person** in connection with an **Insured Entity**, or in connection with an **Insured Person** in such capacity; or
- (ii) request by an **Insured Entity** of an **Insured Person** for an interview, meeting, sworn testimony, or documents related to an investigation of an **Insured Entity** by an **Enforcement Authority**,

in connection with: (a) a **Plan**; or (b) insurance actually or attempted to be purchased through a **Healthcare Exchange**. **Inquiry** shall not include any investigation, examination, or request arising from anti-bribery/corruption laws.

Insured means any **Insured Entity**, any **Plan**, any **Committee**, and/or any **Insured Person**, or any entity formed and operating outside the United States that has been established by an **Insured Entity** and duly appointed by such **Insured Entity** to act as a trustee of any **Plan**.

Insured Person means any:

- (i) past, present, or future natural person duly elected or appointed director, trustee (excluding a bankruptcy or litigation trustee), advisory board member, officer, governor, **Manager**, chief legal counsel, controller, risk manager, director of human resources or such functional equivalent of an **Insured Entity**;
- (ii) **Employee**;
- (iii) past, present, or future natural person employee or trustee of a **Plan**;
- (iv) with respect to any **Insured Entity** or **Plan** formed or operated outside the United States of America or its territories or possessions, any one or more natural persons who served, now serve, or shall serve such **Insured Entity** or **Plan** in a position equivalent to the positions described in (i) through (iii) above; or
- (v) former **Employee** retained as a fiduciary or plan consultant to a **Plan**; provided that for the purposes of determining an **Insured Entity's** indemnification obligation to any such fiduciary or consultant, each such fiduciary or consultant shall be deemed a director or officer of the **Insured Entity**, and the **Insured Entity** shall be deemed to have granted indemnification to each such fiduciary or consultant to the fullest extent permitted by law to the same extent as any director or officer of the **Insured Entity**, and provided further that this paragraph (v) shall not include any such former **Employee** in his or her capacity as an employee of a third party, including a third-party service provider.

Internal Appeal means an appeal of an adverse benefits determination by an **Insured** pursuant to the U.S. Department of Labor's claim procedure regulation 29 C.F.R. Section 560.503-1(h) or any similar internal claim appeal procedure pursuant to applicable law.

Loss means the amount the **Insureds** become legally obligated to pay on account of any **Claim** including:

- (i) compensatory damages;
- (ii) judgments;
- (iii) any award of pre-judgment and post-judgment interest with respect to covered damages;
- (iv) settlements;
- (v) **Defense Costs**;
- (vi) claimants' attorneys' fees and costs that are part of an otherwise covered judgment against an **Insured** (including those awarded pursuant to Section 502(g) of **ERISA**) or covered settlement provided such fees and costs are affirmatively included in such settlement;
- (vii) reasonable fees and expenses of an independent fiduciary retained by an **Insured** to review a proposed settlement of a covered **Claim** (including reasonable fees and expenses of any law firm hired by such independent fiduciary to facilitate that review);
- (viii) punitive, exemplary, or multiple damages to the extent insurable. The insurability of punitive, exemplary, or multiple damages shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, provided that jurisdiction has significant relation to the **Named Insured**, the **Insured Persons**, the Insurer, this Policy, or the locale of the **Claim**;
- (ix) solely with respect to the Voluntary Compliance Settlement Program, **Voluntary Compliance Program Loss**;
- (x) the following civil penalties:
 - (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or Section 502(l) of **ERISA**;
 - (b) civil penalties imposed upon an **Insured** by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or any such successor, or The Pensions Regulator or any successor thereto, or Ireland's Pensions Authority or Pensions Ombudsman, but only if the funds or assets of the **Plan** are not used to pay, reimburse, or fund the premium for this Coverage Section;
 - (c) civil money penalties imposed upon an **Insured** for the violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 or the Health Information Technology for Economic and Clinical Health Act, both as amended; provided that the Insurer's maximum limit of liability under this Coverage Section for all such civil penalties shall be the HIPAA Privacy Penalties Sublimit of Liability set forth in Item 3(b) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability;
 - (d) the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, as amended, for an inadvertent prohibited transaction, provided the Insurer's maximum liability under this Coverage Section for all such tax penalties shall be the Section 4975 Penalties Sublimit of Liability set forth in Item 3(c) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability;
 - (e) civil penalties imposed upon an **Insured** as a fiduciary pursuant to Section 502(c) of **ERISA**; provided that the Insurer's maximum liability under this Coverage Section for all such civil penalties shall be the Section 502(c) Penalties Sublimit of Liability set forth in Item 3(d) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability;
 - (f) civil penalties imposed upon an **Insured** under the Pension Protection Act of 2006, as amended, provided that the Insurer's maximum liability under this Coverage Section for all such civil penalties shall be the Pension Protection Act Penalties Sublimit of

- Liability set forth in Item 3(e) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability; or
- (g) civil penalties imposed upon an **Insured** under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2011, as amended, provided that the Insurer's maximum liability under this Coverage Section for all such civil penalties shall be the Affordable Care Act Penalties Sublimit of Liability set forth in Item 3(f) of this Coverage Section's Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit of Liability.

Loss (other than **Defense Costs**) shall not include:

- (a) any amount for which the **Insureds** are absolved from payment by reason of covenant, agreement, or court order;
- (b) fines, penalties, or taxes other than civil fines or penalties or taxes expressly referenced above;
- (c) any costs incurred by an **Insured Entity** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
- (d) **Clean-Up Costs**;
- (e) **Benefits Due**;
- (f) an **Insured Entity's** contributions owed to any **Plan** for which any **Insured** is found to be legally responsible due to a failure to collect such contributions, unless the failure to collect such contributions is due to the negligence of an **Insured**;
- (g) matters uninsurable under the law pursuant to which this Policy is construed.

Managed Care Services mean the management or administration utilizing cost control mechanisms, by any entity that is not an **Insured**, of any **Plan** that is a health care, pharmaceutical, vision or dental plan.

Mass or Class Action Claim means any **Claim** maintained by:

- (i) or on behalf of, a putative or certified class of claimants pursuant to Rule 23, Federal Rules of Civil Procedure, or a similar state or foreign functional equivalent of such rule of civil procedure;
- (ii) or on behalf of, five (5) or more natural person named claimants who are acting in concert, regardless of whether or not such persons are represented by one (1) or more legal counsel; or
- (iii) a governmental entity, department, agency, or authority on behalf of one (1) or more classes or groups of similarly situated claimants.

Plan means:

- (i) any employee benefit plan, welfare benefit plan, or pension benefit plan as defined under **ERISA**, located anywhere in the world, which is sponsored solely by an **Insured Entity**, or sponsored jointly by an **Insured Entity** and a labor organization solely for the benefit of the employees of the **Insured Entity**;
- (ii) any other employee benefit plan or program or fringe benefit or excess benefit plan not subject to **ERISA** located anywhere in the world, which is sponsored solely by an **Insured Entity** for the benefit of employees;
- (iii) any employee benefit plan or program otherwise described in paragraphs (i) or (ii) above while such plan or program is being actively developed, formed, or proposed, by an **Insured Entity** prior to the formal creation of such plan or program;
- (iv) any government-mandated insurance program for workers' compensation, unemployment, social security, or disability benefits for employees of the **Insured Entity**;
- (v) a Voluntary Employee's Beneficiary Association as defined under Section 501(c)(9) of the Internal Revenue Code of 1986, the purpose of which is to provide life, sickness, accident, or other benefits for voluntary members who are **Employees** (including their dependents or designated beneficiaries); or
- (vi) any stock option plan and stock purchase plan operated solely by the **Insured Entity** for the benefit of **Employees**, other than any employee stock ownership plan.

Plan shall not include any employee stock ownership plan, or any multi-employer plan as defined by **ERISA** unless otherwise endorsed.

Self-Administered Plan means a **Plan** administered by an **Insured** in which the employer or plan sponsor, as defined under **ERISA**, retains the right to make the final benefit determination.

Voluntary Compliance Program means any voluntary compliance resolution program, or any similar voluntary settlement program, administered by the U.S. Department of Labor, the U.S. Internal Revenue Service or any other domestic or foreign governmental authority.

Voluntary Compliance Program Loss means fines, penalties, sanctions, or fees paid by an **Insured** pursuant to a **Voluntary Compliance Program** resulting from actual or alleged non-compliance by a **Plan** with any statute, rule, or regulation.

Voluntary Compliance Program Loss shall not include any:

- (a) costs to correct any non-compliance, or any other charges, expenses, taxes, or damages; or
- (b) fines, penalties, sanctions, or fees relating to a **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 the Insurer of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Voluntary Compliance Program Notice means prior written notice of the **Insured's** intent to enter into a **Voluntary Compliance Program** with respect to any actual or alleged non-compliance of a **Plan** with any statute, rule, or regulation.

Wage and Hour Laws mean any federal, state, local, or statutory, common law, rule, regulation, or any foreign functional equivalent thereof, regulates or governs fair labor, employment, wages, hours, payroll, or labor requirements, standards, or policies and procedures including, but not limited to:

- (i) recordkeeping, timing, or manner of payment of minimum wages, prevailing compensation rates, overtime pay, vacation pay, pay equity, off-the-clock or remote work, on-call time compensation, compensation for waiting/dressing times, or manner of payment/compensation for time spent in work-related/company sponsored activities;
- (ii) meal or rest break periods;
- (iii) gratuity crediting/distribution of gratuity pools;
- (iv) employee/non-employee classification of any person for wage and hour/benefit purposes;
- (v) garnishments, withholdings, or other deductions from wages;
- (vi) child labor; or
- (vii) reimbursement of work-related expenses or cost of tools to any person providing services or labor to, or on behalf of, an **Insured**,

or any similar practices, procedures, or policies to those described above.

Wrongful Act means any actual or alleged:

- (i) error, misstatement, misleading statement, neglect, breach of duty, act, or omission committed or allegedly committed by an **Insured** in the discharge of duties as a fiduciary of any **Plan**;
- (ii) negligent act, error or omission committed or allegedly committed by an **Insured** in the **Administration** of any **Plan**;
- (iii) other matter claimed against an **Insured** by reason of the **Insured's** service as a fiduciary, or the **Insured's Administration**, of any **Plan**;
- (iv) act, error, or omission, committed or allegedly committed by an **Insured** solely in such **Insured's** settlor capacity with respect to any **Plan**; or
- (v) breach of fiduciary duty by an **Insured** with respect to the actual or attempted purchase of insurance through a **Healthcare Exchange**.

IV. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** in connection with any **Claim** made against any **Insured**:

Bodily Injury/Property Damage

for any actual or alleged bodily injury, invasion of the right of privacy (other than a violation of **ERISA** or the Health Insurance Portability and Accountability Act of 1996 as amended), sickness, disease, death, mental anguish, emotional distress, or humiliation of any person, or damage to or destruction of any tangible property or electronic data including loss of use; provided this Exclusion shall not apply to:

- (a) any **Claim** resulting from the negligent selection of any **Managed Care Services** provider or administrator; or
- (b) improper denial or delay of any benefit under a **Plan**, other than a **Self-Administered Plan**;

Conduct

based upon, arising out of, or attributable to: (i) any deliberate fraudulent act, deliberate dishonest act or omission, deliberate crime, or any willful violation of law by such **Insured**; or (ii) gaining any financial profit or financial advantage or receiving financial remuneration to which such **Insured** was not legally entitled; provided such conduct above was established by a final and non-appealable adjudication in the underlying action (other than any declaratory action or similar proceeding by the parties);

Contract

for any actual or alleged liability of an **Insured** under any written contract or agreement, provided that this Exclusion shall not apply to the extent: (i) that such **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement, or such functionally equivalent compact, pursuant to which a **Plan** was established;

Prior Notice

based upon, arising out of, or attributable to any fact, circumstance, situation, or **Wrongful Act** that has been the subject of any written notice given, and accepted, under any policy of which this Policy or Coverage Section is a direct or indirect renewal or replacement;

Prior Proceedings

based upon, arising out of, or attributable to any **Claim** or other litigation, arbitration, or administrative or regulatory proceeding or investigation involving any **Insured**, or the same or substantially the same fact, circumstance, or situation underlying or alleged therein, which was commenced, or pending on or before, the Prior Litigation Date set forth in Item 5 of this Coverage Section's Declarations;

Violations of Specified Laws

for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, social security, or disability benefits, or any foreign functional equivalent thereof; provided this Exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or Health Insurance Portability and Accountability Act of 1996, as amended;

Wage and Hour

based upon, arising out of, or attributable to any actual or alleged violation of any **Wage and Hour Laws**, including the duties and responsibilities imposed by such laws.

- B. IMPUTATION OF EXCLUSIONS

For purposes of the above, the conduct or actual knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**. Only the conduct or actual knowledge of any **Control Group Officer** shall be imputed to such **Insured Entity**.

V. NOTICE FOR OPTIONAL COVERAGES

If an **Insured** elects to seek coverage for **Voluntary Compliance Program Notice, Inquiry, or Internal Appeal**, then the **Insured** must submit a written notice in accordance with the Claim reporting requirements found in Section VI, A of the General Terms and Conditions to the Insurer at the address set forth in Item 3 of the General Terms and Conditions' Declarations. Such notice must detail sufficiently the nature of the **Inquiry or Internal Appeal** and all related documents. With respect to the **Voluntary Compliance Program Notice**, such notice must detail sufficiently the Voluntary Compliance Resolution Program the **Insured** intends to submit to, as well as the nature and date of the non-compliance and include all related documents.

In such event, the **Voluntary Compliance Program Notice, Inquiry, or Internal Appeal** will be deemed to have first been made on the date received by the Insurer. The Insurer reserves the right, in its sole discretion, to waive and accept any prior notice requirement for a **Voluntary Compliance Program Notice** within sixty (60) days of the **Insured's** entry into such program.

Any coverage under this Policy with respect to an **Inquiry, Internal Appeal or Voluntary Compliance Program Loss** shall only apply to **Defense Costs, Loss, or Voluntary Compliance Program Loss**, respectively, incurred after the date the notice of the **Inquiry, Internal Appeal, or Voluntary Compliance Program Notice** is provided to the Insurer by the **Insured**.

VI. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY, SUBLIMITS, AND RETENTIONS

The maximum Limit of Liability that the Insurer will pay for all **Loss** arising from all **Claims** and **Voluntary Compliance Program Loss** is the Aggregate Limit of Liability set forth in Item 2 of the Declarations for this Coverage Section. The Retention for each **Claim** is set forth in Item 4 of this Coverage Section's Declarations. There shall be no Retention for a **Claim** for **Voluntary Compliance Notice or Non-Indemnifiable Loss**, or with respect to any covered sublimited civil penalties as described within the definition of **Loss**.

The maximum amount that the Insurer will pay for any Sublimited Coverage is set forth in Item 3 of this Coverage Section's Declarations.

Each **Claim** Retention is per **Claim** as set forth in Item 4 of the Declarations for this Coverage Section. The **Mass or Class Action Claim** Retention shall apply to any such **Mass or Class Action Claim**.

VII. CREATION, ACQUISITION, TERMINATION, OR TRANSFER OF A PLAN OR ESOP

A. Creation or Acquisition of a Plan

If before or during the **Policy Period** a **Plan** is acquired or created coverage under this Coverage Section shall apply automatically to such new **Plan** and its **Insureds**, provided such coverage shall apply only with respect to **Claims** for such **Wrongful Acts, Inquiry, or Internal Appeal** or non-compliance of a **Plan** occurring after such acquisition or creation.

B. Termination, Spin-Off, or Sale of a Plan

If before or during the **Policy Period** a **Plan** is terminated, spun-off, or sold, coverage for such **Plan** and its **Insureds** under this Coverage Section shall continue until termination of this Policy if and to the extent such **Plan** and its **Insureds**:

- (i) were **Insureds** at the time of such termination, spin-off, or sale of such **Plan**; or
- (ii) would have been an **Insured** at the time of such termination, spin-off, or sale of such **Plan** if this Policy had been in effect,

provided such continuation of coverage shall apply only with respect to **Wrongful Acts, Inquiry or Internal Appeal** or non-compliance of a **Plan**, occurring prior to the date the **Plan** was terminated, spun-off, or sold, which in the event of termination shall be the date of final distribution of the assets of such **Plan**.

C. Plan Merger

If before or during the **Policy Period**, a **Plan** is merged with another **Plan**, this Policy will continue to provide coverage for both **Plans** and their **Insureds**, subject to all other terms and conditions of this Policy.

If, during the **Policy Period**, a **Plan** ("Covered Plan") is merged with another plan for which coverage is not provided under this **Policy** ("Uncovered Plan"), coverage with respect to the resulting merged **Plan** and its **Insureds** will continue, subject to all other terms and conditions of this **Policy**, but such coverage shall not apply to **Wrongful Acts** by the Uncovered Plan or its **Insureds** taking place prior to the date of such merger.

D. Creation or Acquisition of an ESOP

- (i) If during the **Policy Period** an **Insured Entity** directly or indirectly acquires or creates an employee stock ownership plan ("ESOP"), then the **Insured Entity** shall give the Insurer written notice of such creation or acquisition, along with any other information the Insurer requests.
- (ii) The Insurer shall, at the **Insured Entity's** request, provide a quotation for coverage under this Coverage Section for **Claims** based upon, attributable to, or arising out of such ESOP, subject to any terms, conditions, limitation of coverage, and such additional premium as the Insurer, in its sole discretion, may require. No coverage will be afforded under this Coverage Section for any such **Claim** unless the **Insureds** agree to any such quoted terms, conditions and limitations of coverage and pay such additional premium required by the Insurer.

VIII. DEFENSE OF WAGE AND HOUR LAWS CLAIMS

With respect to any **Claim** that contains any employment-related allegation(s) as well as any actual or alleged violation of, or breach of an **Insured's** duties and responsibilities with respect to, any **Wage and Hour Laws**, the **Insured** shall have the duty to defend such **Claim** regardless of the type of defense elected by the **Insured** on the applicable Declarations. Accordingly, such **Claim** shall be subject to the repayment and allocation provisions of the General Terms and Conditions.

IX. PRIORITY OF PAYMENTS

If the amount of any covered **Loss** which is otherwise due and owing by the Insurer exceeds the then remaining limit of liability, the Insurer shall pay such **Loss** (subject to the applicable Limit of Liability) as follows:

- (i) on behalf of any **Insured Person**; then
- (ii) on behalf of any **Plan**; then
- (iii) on behalf of any **Insured Entity**.

X. OTHER INSURANCE

Any coverage afforded under this Coverage Section will be excess of, and non-contributory to, any other valid and collectible insurance, prior or current, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent, or otherwise.

Any payment by an **Insured** of a retention or deductible under any other insurance policy described above shall reduce the applicable Retention under this Coverage Section by the amount of such payment which would otherwise have been covered **Loss** under this Coverage Section.