

OLD REPUBLIC UNION INSURANCE COMPANY

FIDUCIARY LIABILITY COVERAGE SECTION

Important Notice

This is a claims made policy 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.

I. INSURING CLAUSES

A. Fiduciary Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Wrongful Acts**.

B. Voluntary Compliance Settlement Program

The Insurer shall pay on behalf of the **Insureds Voluntary Compliance Program Loss** and **Defense Costs** for which the **Insureds** become legally obligated to pay by reason of a **Voluntary Compliance Program Notice** that is first given to the Insurer during the **Policy Period**, provided that the Insurer's maximum liability for all **Voluntary Compliance Program Loss** and **Defense Costs** covered pursuant to this Insuring Clause B. shall not exceed in an aggregate amount the **Voluntary Compliance Program Loss** Sublimit of Liability as set forth in Item 5. C. of the Declarations, which aggregate amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability, and no Retention shall apply to such amount.

II. DEFINITIONS

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

A. **Administration** means, with respect to any **Plan**, advising, counseling or giving notice to **Employees**, participants or beneficiaries, providing interpretations, or handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under the **Plan**.

B. **Claim** means:

1. a written demand against any **Insured** for monetary damages or other non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand;
2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
3. an arbitration, mediation or other alternative dispute resolution proceeding against any **Insured** commenced by the **Insured's** receipt of a demand for arbitration or mediation or similar document;
4. a criminal proceeding against any **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**;

5. a formal administrative or formal regulatory adjudicatory proceeding against any **Insured** commenced by the filing of a notice of charge, formal investigative order or similar document which names the **Insured** as a target or subject of such proceeding;
6. a civil, criminal, administrative or regulatory investigation against an **Insured Person**, commenced by the service upon or other receipt by the **Insured Person** of a written notice, target letter or subpoena from the investigating authority identifying by name the **Insured Person** as an individual against whom a formal proceeding may be commenced, including without limitation such a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or the Pensions Regulator or any successor thereto, or any similar governmental authority located within or outside the U.S.;
7. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
8. the arrest or confinement by an **Enforcement Authority** of any **Insured Person** to: (i) a specified residence; or (ii) a secure custodial premises operated by or on behalf of an **Enforcement Authority**, in connection with the business of an **Entity**;
9. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand;
10. an **Inquiry**, if and when the **Insured Persons**, the **Plan** or the **Entity** elect at their option to give to the Insurer written notice thereof pursuant to Section IV. of the General Terms and Conditions;
11. solely for purposes of Insuring Clause B., a **Voluntary Compliance Program Notice**;

including any appeal therefrom.

- C. **Committee** means any committee established by the **Entity** with respect to a **Plan** and which solely consists of natural person members who otherwise are **Insured Persons**.
- D. **Entity** means, collectively, the **Named Insured**, any **Investment Advisor** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- E. **Insured Persons** means:
1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, **Manager**, regent, governor, officer, in-house general counsel, controller, risk manager, director of human resources or their functional equivalent of the **Entity**;
 2. any one or more **Employees** not described in subparagraph 1. above;
 3. any one or more natural persons who were, now are, or shall become an employee or trustee of a **Plan**; and
 4. any other past, present or future natural person fiduciary of a **Plan**, provided that such natural person fiduciary is added as an **Insured Person** by written endorsement to this Coverage Section.
- F. **Insureds** means the **Entity**, any **Plan**, any **Committee**, and any **Insured Persons**.
- G. **Loss** means the amount which the **Insureds** become legally obligated to pay on account of **Claims** for which coverage under this Coverage Section applies, including, but not limited to, (1) damages (including punitive, exemplary or multiple damages if insurable as provided below), (2) judgments, (3) any award of pre-judgment and post-judgment interest with respect to covered damages, (4) settlements, (5) **Defense Costs**, (6) claimant's attorney's fees and costs for which an **Insured**

against whom the **Claim** is made is legally obligated to pay by reason of Section 502(g) of **ERISA** or a court order or settlement agreement to which the Insurer consents pursuant to Section VI. of the General Terms and Conditions, and (7) the following civil penalties:

1. 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 (l), respectively, of **ERISA**;
2. civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or any successor thereto, or the Pensions Regulator or any successor thereto, or Ireland's Pensions Board 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; or
3. civil money penalties imposed upon an **Insured** for the violation by such **Insured** of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 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 5. C. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability;
4. 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 5. C. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability;
5. civil penalties upon an **Insured** as a fiduciary pursuant to Section 502(c) of **ERISA**; provided that the Insurer's maximum limit of liability under this Coverage Section for all such civil penalties resulting from all **Claims** first made during the **Policy Period** shall be the 502(c) Penalties Sublimit of Liability set forth in Item 5 .C. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability;
6. civil penalties imposed upon an **Insured** under the Pension 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 5. C. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability; or
7. 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 5. C. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability.

Solely for the purposes of Insuring Clause B., **Loss** means **Voluntary Compliance Program Loss** and **Defense Costs** resulting from a **Voluntary Compliance Program Notice**.

Loss (other than **Defense Costs**) does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes imposed by law, (3) fines or penalties imposed by law, other than civil penalties expressly referenced above, (4) any costs incurred by the **Entity** or **Plan** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief, (5) cleanup costs relating to hazardous materials or pollution, or (6) matters uninsurable under the law pursuant to which this **Policy** is construed.

The insurability of punitive, exemplary or multiple damages, fines or penalties otherwise included within this definition shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Named Insured**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim** is located.

H. **Plan** means:

1. any employee benefit plan, welfare benefit plan, or pension benefit plan as defined under **ERISA**, including any **VEBA**, located anywhere in the world, which is operated solely by an **Entity**, or operated jointly by an **Entity** and a labor organization only for the benefit of the **Employees** of such **Entity**; provided that any coverage under this Coverage Section relating to an employee stock ownership plan created or acquired during the **Policy Period** shall be subject to Section VIII. F. of the General Terms and Conditions;
2. 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 operated solely by an **Entity**, or operated jointly by an **Entity** and a labor organization only for the benefit of the **Employees** of such **Entity**;
3. any other plan, program or fund specifically included as a **Plan** by written endorsement to this Coverage Section; and
4. solely with respect to a **Wrongful Act** described in Section II. M. 2. below, any insurance for unemployment, workers compensation, social security or disability benefits for **Employees**, provided that such insurance is government-mandated.

Notwithstanding anything to the contrary set forth in this Coverage Section, and except as otherwise provided in Section VIII. F. of the General Terms and Conditions, **Plan** shall not include any employee stock ownership plan created or acquired by the **Entity** during the **Policy Period** or any multi-employer plan.

I. **VEBA** means Voluntary Employees' Beneficiary Associations as set forth in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended. Such Associations may offer the following benefits for voluntary members who are **Employees**, their dependents or beneficiaries: life insurance, accident insurance, sick leave pay, supplemental unemployment or other benefits.

J. **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 governmental authority, including without limitation the Voluntary Fiduciary Correction Program, the Employee Plans Compliance Resolution System and the Delinquent Filer Voluntary Compliance Program.

K. **Voluntary Compliance Program Loss** means fines, penalties, sanctions, or fees collected from an **Insured** by a governmental authority pursuant to a **Voluntary Compliance Program** resulting from unintentional non-compliance by a **Plan** with any statute, rule or regulation, provided that the **Voluntary Compliance Program Notice** relating thereto was given to the Insurer during the **Policy Period**.

L. **Voluntary Compliance Program Notice** means prior written notice by the **Insured** to the Insurer that it is the **Insured's** intent to enter into a **Voluntary Compliance Program** with respect to any **Plan**, provided that no **Insured Person** had any knowledge that such **Plan** actually was or allegedly was not compliant as of: (i) the inception date of this **Policy**; or (ii) the inception 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, whichever is earlier.

M. **Wrongful Act** means any actual or alleged:

1. error, misstatement, misleading statement, neglect, breach of duty, omission or act committed or attempted by an **Insured** in the discharge of duties as fiduciaries of any **Plan**;
2. negligent act, error or omission, committed or attempted by an **Insured**, in the **Administration** of any **Plan**;
3. other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Plan**; or

4. negligent act, error or omission, committed or attempted by an **Insured** in such **Insured's** settlor capacity with respect to establishing, amending, terminating or funding any **Plan**.

III. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured**:

1. Statutory Benefits

for any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, rule or regulation governing workers' compensation, unemployment insurance, unemployment compensation, social security or disability benefits; provided this exclusion shall not apply with respect to any responsibilities, obligations or duties imposed by:

- a. the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and any rules or regulations promulgated thereunder; or
- b. the Health Insurance Portability and Accountability Act of 1996, as amended, and any rules or regulations promulgated thereunder; or

2. Contractually Assumed Liability

for any liability of others assumed by any **Insured** under any contract or agreement, provided this exclusion shall not apply to:

- a. any liability that would have attached to the **Insured** in the absence of such contract or agreement; or
- b. any liability assumed in accordance with or under the agreement or declaration of trust pursuant to which a **Plan** was established.

- B. The Insurer shall not be liable for **Loss**, other than **Defense Costs**, that constitutes or is substantially equivalent to (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (iii) any plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits; provided this exclusion shall not apply to:

1. benefits payable by a natural person **Insured** as a personal obligation, and recovery for such benefits is based upon a covered **Wrongful Act**; or
2. that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in the **Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with the participant's investment directions, even if the amounts sought or recovered by the plaintiff in such **Claim** are described by plaintiffs as "benefits" or determined by a court to be "benefits."