

## ENDORSEMENT

[Print Coverage Section description on Endorsements]

Effective date of  
this endorsement: [Transaction Effective Date]

Company: [Carrier name]  
Endorsement No. [Endorsement number that is  
calculated when form fill-ins are entered]  
To be attached to and  
form a part of Policy No. [Formatted Policy  
Number]

Issued to: [Account Name]

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### FIDUCIARY LIABILITY SETTLOR PLUS ENDORSEMENT

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This table of contents and the use and organization of headings and sections in this policy and endorsement are made for the purpose of convenient reference and orderly arrangement, and no implication, inference or presumption shall be drawn therefrom. The entire policy and any attached endorsements must be read in their entirety.

In consideration of the premium charged, it is agreed that solely with respect to this Fiduciary Liability Coverage Section, the following shall apply:

## 1. AMEND DECLARATIONS

Item 2, Limits of Liability, of the Declarations for this coverage section is amended to add the following:

(C) Sublimits of Liability:

- (i) **Canadian Pension Penalties:** [Enter sublimit amount - NO MORE THAN \$250,000]
- (ii) **HIPAA Penalties:** [Enter sublimit amount - NO MORE THAN \$250,000]
- (iii) **PPACA Penalties:** [Enter sublimit amount - NO MORE THAN \$250,000]
- (iv) **Section 4975 Tax Penalty:** [Enter sublimit amount - NO MORE THAN \$250,000]
- (v) **Section 502(c) Penalties:** [Enter sublimit amount - NO MORE THAN \$250,000]

(D) Voluntary Settlement Program Coverage Insuring Clause 2:

[Enter sublimit amount - NO MORE THAN \$250,000]

NOTE: The Sublimits of Liability shown in (C) and (D) above, are part of, and not in addition to, the Limits of Liability shown in Item 2 of the Declarations for this coverage section.

## 2. AMEND INSURING CLAUSE 1, AND ADD INSURING CLAUSE 2 VOLUNTARY SETTLEMENT PROGRAM COVERAGE WITH SUBLIMIT

Subsection 1, Insuring Clause, of this coverage section is deleted and replaced with the following:

Subsection 1. Insuring Clauses

1. Fiduciary Coverage Insuring Clause 1

The Company shall pay on behalf of each of the **Insureds** all **Loss** for which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured**:

- (i) during the **Policy Period**, or, if exercised, the Extended Reporting Period for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, before or during the **Policy Period** by an **Insured** or by any person whose **Wrongful Acts** the **Insured** is legally responsible; or
- (ii) that is a **Pre-Claim Investigation** or **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Company in writing during the **Policy Period**.

2. Voluntary Settlement Program Coverage Insuring Clause 2

The Company shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defence Costs** with respect to a **Settlement Program Notice** first reported to the Company during the **Policy Period**, provided (i) the **Settlement Fees** and **Defence Costs** are incurred after such **Settlement Program Notice** is first reported to the Company, and (ii) the Company's maximum liability for all **Settlement Fees** and **Defence Costs** with respect to all **Settlement Program Notices** first reported to the Company during the **Policy Period** shall be the amount set forth in Item 2.(D) of the Declarations for this coverage section. Such amount shall be part of, and not in addition to, the Limit of Liability otherwise applicable to this coverage section.

3. ADD INTERVIEW COVERAGE

Interview Coverage

- (A) The Company shall pay, on behalf of an **Insured Person**, **Defence Costs** incurred solely by such **Insured Person** on account of an **Interview** first made during the **Policy Period**, except to the extent that such **Defence Costs** have been paid or indemnified.
- (B) The Company shall pay, on behalf of a **Sponsor Organization** or **Benefit Program**, **Defence Costs** incurred solely by an **Insured Person** on account of an **Interview** first made during the **Policy Period**, to the extent the **Sponsor Organization** or **Benefit Program** pays or indemnifies such **Defence Costs**; provided that the coverage afforded pursuant to this paragraph shall be subject to the Deductible Amount set forth in Item 3(B) of the Declarations for this coverage section.

4. ADD SPOUSAL COVERAGE

The following paragraph is added to Subsection 2, Estates and Legal Representatives:

If a **Claim** against an **Insured Person** includes a claim against the **Insured Person's** lawful spouse or common law partner solely by reason of (i) such person's status as a spouse or common law partner of the **Insured Person**, or (ii) such spouse's or common law partner's ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** of the **Insured Person**, all loss which the spouse or common law partner becomes legally obligated to pay on account of the **Claim** shall be treated as **Loss** which the **Insured Person** becomes legally obligated to pay on account of the **Claim** made against the **Insured Person**. All limitations, conditions, provisions and other terms of coverage applicable to the **Insured Person's Loss** shall also be applicable to the spousal or common law partner loss. This coverage extension does not apply to any **Claim** alleging any act or omission by the **Insured Person's** spouse or common law partner.

5. AMEND DEFENCE PROVISIONS

Subsection 3, Defence Provisions, of this coverage section is amended as follows:

- (A) The third paragraph is amended to include the following:

The failure of any **Insured Person** to give the Company the information, assistance and cooperation as it may reasonably require shall not impair the rights of any other **Insured Person** under this coverage section.

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- (B) The fourth paragraph is amended to include the following:
- However, the Company may, in its sole discretion, waive the foregoing requirement with respect to **Defence Costs** incurred within ninety (90) days prior to the reporting of a **Claim** pursuant to Subsection 13, Reporting and Notice, of this coverage section.
- (C) The following paragraphs are added:
- Any advancement of **Defence Costs** shall be repaid to the Company by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defence Costs** are not insured under this coverage section. However, the Company will not seek repayment from an **Insured Person** of advanced **Defence Costs** that are uninsured pursuant to Exclusion 5(b) or 5(h) unless the applicable determination standard set forth in such Exclusion (i.e., in-fact, final adjudication, or other) or any applicable endorsement thereto has been met with respect to such **Insured Person**.
- If a **Sponsor Organization** refuses in writing, or fails within sixty (60) days of an **Insured Person's** written request for indemnification, to advance, pay or indemnify an **Insured Person** for **Loss** on account of a **Claim**, then, upon the **Insured Person** reporting the **Claim** pursuant to Subsection 13, Reporting and Notice, of this coverage section, the Company shall advance **Defence Costs** until such time that the **Sponsor Organization** accepts the **Insured Person's** request for indemnification or the applicable Deductible Amount has been satisfied.
- Any advancement of **Defence Costs** by the Company shall reduce the Limit of Liability set forth in Item 2 of the Declarations for this coverage section. If the Company recovers any such **Defence Costs** paid, the amount of such **Defence Costs** less all costs incurred by the Company to obtain such recovery shall be reinstated to the applicable Limit of Liability set forth in Item 2 of the Declarations for this coverage section.
- Notwithstanding the fourth paragraph of Subsection 3, with respect to any **Claim** reported pursuant to Subsection 13, Reporting and Notice, of this coverage section, the **Insureds** may settle a **Claim** (inclusive of **Defence Costs**) without the Company's prior consent if the amount of such settlement does not exceed the applicable Deductible Amount. However, the Company shall not be liable for any settlement or **Defence Costs** in excess of the applicable Deductible Amount to which it has not consented to in writing. The **Insureds** shall submit to the Company all requested information with respect to any **Claim** settled pursuant to this paragraph upon either the underwriting of a renewal of this coverage section or upon expiration of this coverage section, whichever first occurs.

## **6. AMEND EXTENDED REPORTING PERIOD**

Subsection 4, Extended Reporting Period, of this coverage section is deleted and replaced with the following:

If this coverage section is terminated or is not renewed, other than for nonpayment of premium, the **Insureds**, shall have the right, upon payment of the additional premium set forth in Item 6(A) of the Declarations for this coverage section, to an extension of the coverage granted by this coverage section for the period set forth in Item 6(B) of the Declarations for this coverage section ("Extended Reported Period") following the effective date of termination or non-renewal, but only for any **Wrongful Act** committed, attempted or allegedly committed or attempted, prior to the effective date of termination or non-renewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by the Company within sixty (60) days following the effective date of termination or non-renewal.

Any **Claim** first made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

## 7. AMEND EXCLUSIONS

Subsections 5 and 6, Exclusions, of this coverage section are amended as follows:

(A) Amend Prior Notice Exclusion

Exclusion 5(a) is deleted and replaced with the following:

- (a) based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice accepted under any fiduciary liability or employee benefit liability policy or coverage section of which this coverage section is a direct or indirect renewal or replacement;

(B) Amend Fraud Exclusion

Exclusion 5 (b) is deleted and replaced with the following:

- (b) based upon, arising from, or in consequence of any deliberately fraudulent act or omission or any wilful violation of any statute or regulation by such **Insured**, if a final non-appealable adjudication in any underlying proceeding or action (other than a declaratory action or proceeding brought by or against the Company) establishes such a deliberately fraudulent act or omission or wilful violation;

(C) Amend Government Benefit Program, Workers' Compensation, Unemployment, Social Security, Disability Benefits Exclusion

Exclusion 5(f) is deleted and replaced with the following:

- (f) for any failure of an **Insured** to comply with any law with respect to any **Government Benefit Program**, except (i) the *Consolidated Omnibus Budget Reconciliation Act of 1985*, (ii) the *Health Insurance Portability and Accountability Act of 1996*, or (iii) any amendments to or any rules or regulations promulgated under such Acts;

(D) Amend Pending or Prior Exclusion

Exclusion 5(g) is deleted and replaced with the following:

- (g) based upon, arising from or in consequence of any written demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Date set forth in Item 7 of the Declarations for this coverage section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein; or

(E) Amend Profit Exclusion

Exclusion 5(h) is deleted and replaced with the following:

- (h) based upon, arising from or in consequence of:
  - (i) such **Insured Person** having gained any personal profit, remuneration or other advantage to which such **Insured Person** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory action or proceeding brought by or against the Company) establishes the gaining of such a personal profit, remuneration or advantage; or
  - (ii) such **Sponsor Organization** or **Sponsored Plan** having gained any profit, remuneration or other advantage to which such **Sponsor Organization** or **Sponsored Plan** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory action or proceeding brought by or against the Company) establishes the gaining of such a profit, remuneration or advantage.

(F) Delete Exclusions

Exclusions 5(c), 5(i), 6(a), 6(b), and 6(c) are deleted.

(G) Add Exclusions

With respect to Interview Coverage, the following exclusions shall apply:

The Company shall not be liable for **Defence Costs** on account of any **Interview**:

- (1) based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice accepted under any fiduciary liability or employee benefit liability policy or coverage section of which this coverage section is a direct or indirect renewal or replacement; or
- (2) based upon, arising from or in consequence of any written demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Date set forth in Item 7 of the Declarations for this coverage section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein.

<b>8. AMEND LIMIT OF LIABILITY AND DEDUCTIBLE</b>
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Subsection 8, Limit of Liability and Deductible, of this coverage section is amended as follows:

(A) The second paragraph is deleted and replaced with the following:

The Company's maximum liability for each **Loss** shall be the Limit of Liability for each **Loss** set forth in Item 2(A) of the Declarations for this coverage section.

The Company's maximum aggregate liability for all **Loss** on account of (i) all **Claims** and (ii) all **Interviews** first made during the same **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 2(B) of the Declarations for this coverage section.

The Company's maximum liability for all **Defence Costs** and **Settlement Fees** with respect to each **Settlement Program Notice** for which coverage is provided under Insuring Clause 2, and the Company's maximum aggregate liability for all **Defence Costs** and **Settlement Fees** with respect to all such **Settlement Program Notices** first given to the Company during the **Policy Period**, shall be the amount set forth in Item 2.(D) of the Declarations for this coverage section. Such amount shall be part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section.

Except when required by the insurance laws of the Province of Quebec, **Defence Costs** are part of, and not in addition to, the Limits of Liability set forth in Item 2 of the Declarations for this coverage section, and the payment by the Company of **Defence Costs** shall reduce and may exhaust such applicable Limits of Liability.

(B) The following paragraphs are added:

No Deductible Amount shall apply to:

- (i) any **Loss** constituting **Civil Penalties** imposed by law pursuant to subparagraphs (d), (e), (f), (g) and (h) of the definition of **Civil Penalties**, as defined in this endorsement; or
- (ii) the first \$50,000 in **Defence Costs** incurred for **E-Discovery Specialist Services** on account of a **Claim**.

Any payment by a **Sponsor Organization** of a Deductible Amount on account of an **Interview** shall reduce any Deductible Amount due from the **Sponsor Organization** on account of a **Claim** subsequently afforded coverage under Insuring Clause 1, that is based upon, arising from or in consequence of any fact or circumstances that was the subject of such **Interview**.

## 9. AMEND OTHER INSURANCE

Subsection 9, Other Insurance, of this coverage section is amended as follows:

- (A) The reference to “valid policy(ies)” in the first sentence of this Subsection 9 is replaced with “valid and collectible policy(ies)”.
- (B) The following sentence is added at the end of this Subsection 9 as a separate paragraph:

In addition to, and not in limitation of, the above paragraph, this coverage section shall be specifically excess of, and shall not contribute with, any insurance policy for pollution liability or environmental liability, including any general liability policy.

## 10. AMEND CHANGES IN EXPOSURE, ACQUISITION OR CREATION OF ANOTHER ENTITY OR BENEFIT PROGRAM

Subsection 10, Changes in Exposure, Acquisition or Creation of Another Entity or Benefit Program, of this coverage section is deleted and replaced with the following:

- 10. If the **Sponsor Organization** creates or acquires a **Subsidiary** or **Benefit Program** or otherwise becomes a fiduciary of or responsible for the **Administration** of any **Benefit Program** (“Inception Event”), coverage shall be afforded, subject to the terms and conditions of this coverage section, from the date of the Inception Event for such **Subsidiary**, **Benefit Program**, and any **Insured Persons** of such **Benefit Program**, but only for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, after the date of the Inception Event, unless the Company agrees by endorsement to provide coverage for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, prior to such date. Any such coverage shall be specifically excess of the amount of payment from any other insurance available to such **Benefit Program**, **Insured Persons** or **Sponsor Organization**. Provided that such Inception Event results in an increase of total plan assets of more than 30%, the **Sponsor Organization** shall give written notice to the Company of the Inception Event as soon as practicable together with such information as the Company may require and shall pay any reasonable additional premium required by the Company.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this Subsection 10 with respect to any employee stock ownership plan or any **Insured Persons** or **Sponsor Organization** thereof unless the Company, by specific endorsement hereto, agrees to afford such coverage. Any such coverage shall be at the terms and conditions and for the premium set forth in such endorsement.

## 11. AMEND REPORTING AND NOTICE

Subsection 13, Reporting and Notice, of this coverage section is amended as follows:

- (A) The first paragraph is deleted and replaced with the following:

The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company written notice of any **Claim**, other than a **Pre-Claim Investigation**, **Settlement Program Notice** or **Benefit Claim Denial**, no later than:

  - (i) if this coverage section expires and is renewed with the Company, one hundred and eighty (180) days after such expiration; provided that, if the **Parent Organization** can prove to the Company’s satisfaction that it was not reasonably possible for the **Insureds** to give such notice within the one hundred and eighty (180) day time period and that subsequent notice was given as soon as reasonably possible thereafter, the Company shall waive the foregoing time period;

(ii) if this coverage section expires (or is otherwise terminated) without being renewed with the Company and if no Extended Reporting Period is purchased, sixty (60) days after the effective date of such expiration or termination; or

(iii) the expiration date of the Extended Reporting Period, if purchased;

provided that, if the Company sends written notice to the **Parent Organization** stating that this coverage section is being terminated for nonpayment of premium, the **Insureds** shall give to the Company written notice of such **Claim** prior to the effective date of the termination.

(B) The second paragraph is deleted and replaced with the following:

If during the **Policy Period** an **Insured**:

(i) becomes aware of circumstances which could give rise to a **Claim**, other than a **Settlement Program Notice**, and gives written notice of such circumstances to the Company;

(ii) receives a written request to toll or waive a limitation period or a statute of limitation applicable to **Wrongful Acts** committed, attempted, or allegedly committed or attempted before or during the **Policy Period** and gives written notice of such request and of such alleged **Wrongful Acts** to the Company;

(iii) gives written notice to the Company of a **Settlement Program Notice**; or

(iv) gives written notice to the Company of an **Interview**,

then any **Claim** subsequently arising from the circumstances referred to in (i) above, from the **Wrongful Acts** referred to in (ii) above, from the **Settlement Program Notice** referred to in (iii) above, or from an **Interview** referred to in (iv) above, shall be deemed to have been first made during the **Policy Period** in which the written notice described in (i), (ii), (iii) or (iv) above was first given by an **Insured** to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than one hundred and eighty (180) days after the chief executive officer, chief financial officer, in-house general counsel, or head of benefits (or any equivalent position to any of the foregoing) of a **Sponsor Organization** becomes aware of such **Claim**. With respect to any such subsequent **Claim**, no coverage under this coverage section shall apply to loss incurred prior to the date such subsequent **Claim** is actually made.

## 12. AMEND DEFINITIONS

Subsection 15, Definitions, of this coverage section is amended as follows:

(A) Amend Definition of Administration

The definition of **Administration** is deleted and replaced with the following:

**Administration** means:

(a) advising, counseling, or failing to provide proper or timely notice to **Employees, Executives**, participants or beneficiaries with respect to any **Benefit Program**; or

(b) providing interpretations with respect to any **Benefit Program**; or

(c) handling of records or effecting enrollment, termination or cancellation of **Employees, Executives**, participants or beneficiaries under any **Benefit Program**.



(B) Amend Definition of Claim

The definition of **Claim** is deleted and replaced with the following:

**Claim** means any:

- (a) written demand for:
  - (i) monetary or non-monetary (including injunctive) relief; or
  - (ii) arbitration or mediation,against an **Insured** for a **Wrongful Act**, commenced by the first receipt of such demand by an **Insured**;
- (b) proceeding, including any appeal therefrom, against an **Insured** for a **Wrongful Act**, commenced by:
  - (i) the service of a statement of claim, civil complaint or similar pleading;
  - (ii) the filing of a notice of charges or the entry of a formal order of investigation in connection with a formal civil administrative or formal civil regulatory proceeding;
  - (iii) solely with respect to a criminal proceeding: (1) an arrest; (2) a summons to appear; (3) the return of an indictment, information or similar document; or (4) the receipt of an official request for **Extradition**;
- (c) written notice of commencement of a fact-finding investigation by:
  - (i) in Canada: the Office of the Superintendent of Financial Institutions, or any similar federal, provincial or territorial governmental authority located in Canada or any successor thereto;
  - (ii) in the United States of America: the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any successor thereto;
  - (iii) in the United Kingdom: the Pensions Ombudsman appointed by the Secretary of State for Work and Pensions or by the Occupational Pensions Regulatory Authority or any successor thereto; or
  - (iv) by any similar governmental authority as those set forth in (i), (ii) or (iii) above,against any **Insured** for a **Wrongful Act**;
- (d) investigation of an **Insured Person**, solely in his or her fiduciary capacity with respect to any **Sponsored Plan**, for a **Wrongful Act**, commenced by the **Insured Person's** receipt of a written document from an **Enforcement Unit** identifying such **Insured Person** as the target of an investigation, including a Wells Notice, target letter or search warrant;
- (e) written request upon an **Insured Person** for witness testimony or document production, which does not contain an allegation of a **Wrongful Act**, commenced by the service of a subpoena or other similar document compelling such testimony or production of documents in connection with any matter described in Subsections (a) through (d) above; provided that in such event the Company shall pay, on behalf of such **Insured Person**, **Defence Costs** incurred solely by such **Insured Person** in responding to such request;
- (f) written notice of commencement of a **Pre-Claim Investigation** or **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Company in writing during the **Policy Period**; or
- (g) **Settlement Program Notice**.

Notwithstanding the foregoing, **Claim** shall not include an **Interview**.

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(C) Amend Definition of Defence Costs

The definition of **Defence Costs** is deleted and replaced with the following:

**Defence Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including legal fees, experts' fees, and the cost of **E-Discovery Specialist Services**) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons**) incurred with the Company's prior written consent: (1) in investigating, defending, opposing or appealing any **Claim** or any **Settlement Program Notice**, and the premium for appeal, attachment or similar bonds; or (2) as a result of an **Interview**.

(D) Amend Definition of Employee Benefit Plan

The definition of **Employee Benefit Plan** is deleted in and replaced with the following:

**Employee Benefit Plan** means:

- (a) any plan, Registered Pension Plan, Group Sickness or Accident Insurance Plan, Private Health Services Plan, Supplementary Unemployment Benefit Plan, Deferred Profit-Sharing Plan, Employees' Profit-Sharing Plan, Sickness or Accident Insurance Plans Disability Insurance Plan, Income Maintenance Insurance Plan, Vacation Pay Trust, Employee Trust, Retirement Compensation Arrangement, Salary Deferral Arrangement, Employee Life and Health Trust, all as defined in the *Income Tax Act of Canada*;
- (b) any plan, including any Welfare Benefit Plan, so defined by the *Employee Retirement Income Security Act of 1974*;
- (c) any plan in any country other than Canada or the United States of America, if such plan is substantially similar to any of the foregoing plans and if such plan is created and maintained in such country pursuant to similar provisions of its federal, state, provincial, territorial or local statutory laws;
- (d) any other plan or program otherwise described in paragraphs (a), (b), or (c) above while such plan, fund or program is being actively developed, formed or proposed by the **Sponsor Organization** prior to the formal creation of such plan, fund or program; or
- (e) any other plan, fund, or program specifically included by endorsement to this coverage section.

(E) Amend Definition of Insureds

The definition of **Insureds** is amended to include any **Committee**.

(F) Amend Definition of Insured Persons

The definition of **Insured Persons** is deleted and replaced with the following:

**Insured Persons**, either in the singular or plural, means:

- (a) any:
  - (i) past, present or past, present or future **Executive, Employee** or natural person trustee of the **Sponsor Organization**; or
  - (ii) past, present or future **Executive, Employee** or natural person trustee or fiduciary of the **Sponsored Plan**;
- (b) any past, present or future natural person trustee or fiduciary of a multiemployer plan, if such person, in such capacity, is added as an **Insured Person** by specific written endorsement to this coverage section; and

- (c) any past **Employees** or **Executives** retained as a fiduciary or plan consultant to the **Sponsored Plan**; provided that for the purposes of determining a **Sponsor Organization's** indemnification obligation to any such consultants, each consultant shall be deemed a director or officer of the **Sponsor Organization**. Accordingly, the **Sponsor Organization** shall be deemed to have granted indemnification to each consultant to the fullest extent permitted by statutory, common law, or civil law to the same extent as any director or officer of the **Sponsor Organization**.

**Insured Persons** shall not include any individual in his or her capacity as an employee of any third party, including a service provider.

(G) Amend Definition of Loss

The definition of **Loss** is deleted and replaced with the following:

**Loss** means:

- (a) solely for purposes of Insuring Clause 1, Fiduciary Liability Coverage, the amount which any **Insured** becomes legally obligated to pay as a result of any **Claim**, other than a **Settlement Program Notice**, including:
- (i) compensatory damages;
  - (ii) claimant's legal fees awarded by a court pursuant to Section 502(g) of the *Employee Retirement Income Security Act of 1974*, as amended, against an **Insured**;
  - (iii) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favourable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or the **Claim** giving rise to such damages;
  - (iv) judgments, including pre-judgment and post-judgment interest;
  - (v) settlements;
  - (vi) reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered **Claim** (including reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate that review of such proposed settlement of a covered **Claim**); and
  - (vii) **Defence Costs**;
- (b) solely for purposes of Insuring Clause 2, Voluntary Settlement Program Coverage, **Settlement Fees** and **Defence Costs**; and
- (c) for purposes of Interview Coverage, **Defence Costs**,
- provided that, **Loss** does not include any portion of such amount that constitutes any:
- a. cost incurred by the **Sponsor Organization** or the **Benefit Program** to comply with any order for non-monetary relief, including injunctive relief, or to comply with an agreement to provide such relief;
  - b. amount uninsurable under the law pursuant to which this coverage section is construed;
  - c. tax;
  - d. fine or penalty, except:
    - (i) as provided in subparagraph (a)(iii) above with respect to punitive, exemplary or multiplied damages;
    - (ii) solely with respect to Insuring Clause 2, Voluntary Settlement Program Coverage, **Settlement Fees**; and
    - (iii) **Civil Penalties**;

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- e. amounts incurred by an **Insured** in the defence or investigation of any action, proceeding, investigation or demand that was not then a **Claim**, even if (a) such amount also benefits the defence of a covered **Claim**, or (b) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**;
  - f. benefits due, or to become due, or that portion of any settlement or award in an amount equal to such benefits, under any **Benefit Program**; or benefits which would be due, or that portion of any settlement or award in an amount equal to such benefits, under any **Benefit Program** if such **Benefit Program** complied with all applicable law, including loss resulting from the payment of plaintiff lawyers' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits, except to the extent that:
    - (i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
    - (ii) a **Claim** made against an **Insured**:
      - (1) alleges a loss to the **Benefit Program** and/or to the accounts of such **Benefit Program's** participants by reason of a change in the value of the investments held by such **Benefit Program**, 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"; or
      - (2) seeks amounts that would have been due, but for the failure to enroll in the **Benefit Program**, as set forth in paragraph (c) of the definition of **Administration**, unless and to the extent the **Plan** is self-funded;
  - g. costs incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**; or
  - h. amount constituting any contribution or that portion of any settlement or award in an amount equal to such amount constituting any contribution that is owed to or to fund any **Benefit Program**, except to the extent that an **Insured** is a natural person and the contribution is payable by such **Insured** as a personal obligation, and recovery for the contribution is based upon a covered **Wrongful Act**.

(H) Amend Definition of **Sponsored Plan**

The definition of **Sponsored Plan** is deleted and replaced with the following:

**Sponsored Plan** means an **Employee Benefit Plan**:

- (a) which is not an **Insured Plan**;
- (b) which is operated solely by the **Sponsor Organization** or jointly by the **Sponsor Organization** and a labour organization solely for the benefit of the **Employees** or **Executives** of the **Sponsor Organization** located anywhere in the world and which existed at the Inception Date of this coverage section or of any policy or coverage section of which this coverage section is a renewal or which is created or acquired after the inception of this coverage section, subject to the provisions outlined in this coverage section;
- (c) any other plan, fund, or program specifically included as a **Sponsored Plan** and named in Item 5 of the Declarations of this coverage section; provided however, **Sponsored Plan** shall not include any multiemployer plan, as defined in the *Employee Retirement Income Security Act of 1974*, of the United States of America, as amended, or, in Canada, as defined in relation to pension plans by the *Pension Benefits Standards Act of 1985*, including any rules or regulations thereunder, as amended;

- (d) any other **Employee Benefit Plan** or program not subject to Title 1 of the *Employee Retirement Income Security Act of 1974*, of the United States of America, as amended, operated solely by the **Sponsor Organization** for the benefit of the employees of the **Sponsor Organization**;
  - (e) any other plan or program otherwise described above while such plan or program is being actively developed, formed or proposed by the **Sponsor Organization** prior to the formal creation of such plan or program.
- (l) Amend Definition of Wrongful Act
- The definition of **Wrongful Act** is deleted and replaced with the following:
- Wrongful Act** means any actual or alleged:
- (a) breach of the responsibilities, obligations or duties imposed by any **Benefit Law** upon fiduciaries of the **Sponsored Plan** committed, attempted or allegedly committed or attempted by an **Insured** while acting in the **Insured's** capacity as a fiduciary;
  - (b) negligent act, error or omission in the **Administration** of any **Sponsored Plan** or **Insured Plan** committed, attempted or allegedly committed or attempted by an **Insured**;
  - (c) matter, other than as set forth in (a) or (b) above, claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**;
  - (d) act, error or omission committed, attempted or allegedly committed or attempted by an **Insured**, solely in such **Insured's** settlor capacity with respect to establishing, amending, terminating or funding a **Sponsored Plan**; or
  - (e) with respect to a **Government Benefit Program** any negligent act, error or omission in the Administration of any **Government Benefit Program**.

<b>13. ADD DEFINITIONS</b>
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The following definitions are added:

**Benefit Claim Denial** 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 2560.503-1(h) or any similar claim procedures pursuant to applicable law.

**Benefit Law** means:

- (a) in Canada:
  - (i) the Pension Benefits Standards Act, RSC 1985 Ch 32, including any rules or regulations thereunder, as amended, or the same or similar provisions of any legislation, rules or regulations in each of the provinces or territories of Canada, as amended or as applicable;
  - (ii) the Income Tax Act, RSC 1985 Ch. 1, including any rules or regulations thereunder, as amended, or the same or similar provisions of any legislation, rules or regulations in each of the provinces or territories of Canada, as amended or as applicable, but solely in connection with any obligations and duties imposed upon fiduciaries with respect to any **Employee Benefit Plan**;
  - (iii) any statutory, common law, civil law or regulation applicable to fiduciaries of any **Employee Benefit Plan**; or
  - (iv) any similar federal, provincial, territorial or local law or regulation or any amendment thereunder to (i)-(iii) above;

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- (b) in the United States of America: the Employee Retirement Income Security Act of 1974, as amended and any rules or regulations promulgated thereunder (including, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")); or
  - (c) any equivalent employee benefit law to (a) or (b) above anywhere in the world.

**Canadian Pension Penalties** means civil penalties imposed under the Pension Benefits Standards Act, RSC 1985 Ch 32, including any rules or regulations thereunder, as amended, or the same or similar provisions of any legislation, rules or regulations in each of the provinces or territories of Canada, as amended or as applicable, provided that:

- i. any coverage for such civil penalties applies only if the funds or assets of the pension scheme are not used to fund, pay or reimburse the premium for this policy; and
- ii the Company's maximum limit of liability for all such penalties on account of all **Claims** shall be as set forth in Item 2(C) of the Declarations, which amount is part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations.

**Civil Penalties** means:

- (a) **Canadian Pension Penalties**, to the extent insurable by law.
- (b) 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 the Employee Retirement Income Security Act of 1974, as amended;
- (c) civil penalties imposed by:
  - (i) the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or any successor thereto, by the United Kingdom Occupational Pensions Regulatory Authority, or the Pensions Regulator or any successor thereto, pursuant to the Pension Scheme Act 1993, the Pensions Act 1995, the Pensions Act 2004, or rules or regulations thereunder; or
  - (ii) Ireland's Pensions Board or Pensions Ombudsman,provided any coverage for such civil penalties applies only if the funds or assets of the pension scheme are not used to fund, pay or reimburse the premium for this coverage section;
- (d) civil money penalties imposed upon an **Insured** for such **Insured's** violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA Penalties"); provided the Company's maximum limit of liability for all such HIPAA Penalties on account of all **Claims** shall be the HIPAA Penalties amount set forth in Item 2(C) of the Declarations for this coverage section, which amount is part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section;
- (e) civil money penalties imposed upon an **Insured** for inadvertent violation of the Patient Protection and Affordable Care Act, as amended, and any rules or regulations promulgated thereunder ("PPACA Penalties"); provided the Company's maximum limit of liability for all such PPACA Penalties on account of all **Claims** shall be the PPACA Penalties amount set forth in Item 2(C) of the Declarations for this coverage section, which amount is part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section;
- (f) with respect to covered judgments, the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986 ("Section 4975 Tax Penalty"); provided the Company's maximum limit of liability for such Section 4975 Tax Penalty on account of all **Claims** shall be the Section 4975 Tax Penalty amount set forth in Item 2(C) of the Declarations for this coverage section, which amount is part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section; or

- (g) civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of the Employee Retirement Income Security Act of 1974, as amended, including any amendments pursuant to Section 507 of Title V of the Pension Protection Act of 2006 ("Section 502(c) Penalties"); provided the Company's maximum limit of liability for all such Section 502(c) Penalties on account of all **Claims** shall be the Section 502(c) Penalties amount set forth in Item 2(C) of the Declarations for this coverage section, which amount is part of, and not in addition to, the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section.

**Committee** means any committee established by a **Sponsor Organization** with respect to a **Sponsored Plan**, which consists of at least one natural person member who is an **Insured Person**; provided that no coverage will be available for any member of any such committee who is not an **Insured Person**. For purposes of the foregoing definition of **Committee**, **Insured Person**, as used therein, shall not include any individual in his or her capacity as an employee of a third party, including a service provider.

**E-Discovery** means the review, development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.

**E-Discovery Specialist Services** means solely the following services performed by an **E-Specialist Firm**:

- (a) assisting the **Insured** with managing and minimizing the internal and external costs associated with **E-Discovery**;
- (b) assisting the **Insured** in developing or formulating an **E-Discovery** strategy which shall include interviewing qualified and cost effective **E-Discovery** vendors;
- (c) serving as project manager, advisor and/or consultant to the **Insured**, defence counsel and the Company in executing and monitoring the **E-Discovery** strategy; and
- (d) such other services provided by the **E-Specialist Firm** that the **Insured**, Company, and **E-Specialist Firm** agree are reasonable and necessary given the circumstances of the **Claim**.

**E-Specialist Firm** means the e-discovery consultant firms approved by the Company.

**Employee** means any natural person whose labour or service was, is or will be engaged by and directed by the **Sponsor Organization** or any **Benefit Program**, including part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any independent contractor.

**Enforcement Unit** means any federal, state, local or provincial law enforcement or governmental regulatory authority worldwide, including:

- (a) in Canada: the Canadian Securities Administrators, or any equivalent federal, provincial or territorial governmental authority located in Canada or any successor thereto; however, **Enforcement Unit** shall not include the Office of the Superintendent of Financial Institutions, or any similar federal, provincial or territorial governmental authority located in Canada or any successor thereto;
- (b) in the United States of America: the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general, or the enforcement unit of any securities exchange or similar self-regulatory body; however, **Enforcement Unit** 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 or any successor thereto; or
- (c) in the United Kingdom: **Enforcement Unit** shall not include the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto.

**Executive** means any natural person who was, is or will be:

- (a) a duly elected or appointed director, officer, member of the Advisory Board or in-house general counsel of any **Sponsor Organization** incorporated in Canada or the United States of America;

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- (b) a duly elected or appointed: (i) manager, member of the Board of Managers or equivalent position; (ii) member of the Advisory Board; or (iii) in-house general counsel, of any **Sponsor Organization** formed as a limited liability company in Canada or the United States of America; or
  - (c) a holder of an equivalent position to those described in Subsections (a) or (b) above in any **Sponsor Organization** incorporated, formed or organized anywhere in the world.

**Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation, including the execution of an arrest warrant where such execution is an element of such process.

**Interview** means a request for an interview or meeting with, or a sworn statement from, an **Insured Person** by:

- (a) an **Enforcement Unit** in connection with:
  - (i) such **Insured Person** acting solely in his or her capacity as a fiduciary of a **Sponsored Plan**; or
  - (ii) a **Sponsored Plan's** business activities; or
- (b) a **Sponsor Organization** in connection with an inquiry or investigation of the **Sponsored Plan** by an **Enforcement Unit**,

provided that **Interview** does not include: (1) any request for document production or discovery; (2) any request by an **Enforcement Unit** that is part of any routine or regularly scheduled **Enforcement Unit** oversight, compliance, audit, inspection or examination; or (3) any request that is part of an employment-related investigation or claim.

**Pre-Claim Investigation** means a fact-finding investigation which does not contain any allegation of a **Wrongful Act** in writing, commenced by:

- (a) in Canada: the Office of the Superintendent of Financial Institutions, or any similar federal, provincial or territorial governmental authority located in Canada or any successor thereto;
- (b) in the United States of America: the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any successor thereto;
- (c) in the United Kingdom: the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto; or
- (d) with respect to (a), (b), or (c) above, any similar governmental authority anywhere in the world.

**Settlement Fees** means fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Benefit Program** with any statute, rule or regulation, provided that the **Settlement Program Notice** relating thereto was given to the Company during the **Policy Period**.

**Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including the Employee Plans Compliance Resolution System, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.

**Settlement Program Notice** means, with respect to any **Benefit Program**, prior written notice to the Company by any **Insured** of the **Insured's** intent to enter into a **Settlement Program** provided that no **Insured** knew the **Benefit Program** to be actually or allegedly non-compliant as of the earlier of the inception of this policy or the inception of the first policy in an uninterrupted series of policies providing the same or similar coverage for **Settlement Programs** of which this coverage section is a direct or indirect renewal or replacement.



#### 14. ADD PRIORITY OF PAYMENTS

With respect to any **Claim** first made against an **Insured** during the **Policy Period**, and in the event payment of **Loss** is due under this coverage section but, in the sole discretion of the Company, the amount of such **Loss** in the aggregate potentially exceeds the remaining available Limit of Liability for this coverage section, the Company shall:

- (a) first pay such **Loss** incurred by the **Insured Person**; then
- (b) to the extent of any remaining amount of the Limit of Liability available after payment under (a) above, pay such covered **Loss** incurred by an **Employee Benefit Plan** ; then
- (c) only to the extent of any remaining amount of the Limit of Liability available after payment of (a) and (b) above, pay such **Loss** incurred by the **Sponsor Organization**.

Except as otherwise provided above, the Company may pay **Loss** as it becomes due under this coverage section without regard to the potential for other future payment obligations under this coverage section.

#### 15. AMEND GENERAL TERMS AND CONDITIONS SECTION

##### (A) NOTICE

Solely with respect to this coverage section, Subsection 4, Reporting and Notice, of the General Terms and Conditions section of this policy is deleted and replaced with the following:

Notice

Notice to the Company under this policy shall be given in writing addressed to the following or any branch office of the Company or via e-mail addressed to [canadaclaims@chubb.com](mailto:canadaclaims@chubb.com).

Notice of Claim:

National Claims Department  
199 Bay Street, Suite 2500  
P.O. Box 139, Commerce Court Postal Station  
Toronto, ON M5L 1E2

All Other Notices:

Executive Protection Department  
199 Bay Street, Suite 2500  
P.O. Box 139, Commerce Court Postal Station  
Toronto, ON M5L 1E2

Such notice shall be effective on the date of receipt by the Company at such address or any branch office of the Company

##### (B) INVESTIGATION AND SETTLEMENT

Solely with respect to this coverage section, Subsection 5. Investigation and Settlement, of the General Terms and Conditions Section of this policy is deleted and replaced with the following:

Investigation and Settlement

The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient.

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(C) **SUBROGATION**

Solely with respect to this coverage section, Subsection 7, Subrogation, of the General Terms and Conditions Section of this policy is deleted and replaced with the following:

**Indemnification and Subrogation**

This policy has been issued to the **Parent Organization** with the understanding and agreement that each **Sponsor Organization** agrees to fulfill its indemnification obligations to the fullest extent permitted by: (i) any statutory, common law, or civil law, or (ii) any contract or agreement providing an indemnification obligation exceeding any such statutory, common law, or civil law to any **Insured Person**. If the Company pays as **Loss** any indemnification owed to any **Insured Person** by any **Sponsor Organization**, the Company does not waive or compromise any of its rights to recover such **Loss** from such **Sponsor Organization**.

In the event of any payment under this policy, the Company shall be subrogated to all rights of recovery which any **Insured** may acquire against any other party for the recovery of the amount paid under this policy, however the Company's right of subrogation is secondary to the right of the **Insured** to be fully compensated for its damages. The **Insured** agrees to deliver all necessary documents or papers, to execute and deliver all necessary instruments, to furnish information and assistance, and to take any action the Company may require to facilitate enforcement of the Company's right of subrogation. The Company agrees to pay its portion of the **Insured's** legal fees or other costs associated with a claim or lawsuit to the extent that the Company recovers any portion of the payments made under this policy pursuant to the Company's right of subrogation.

(D) **TERMINATION OF POLICY OR COVERAGE**

Solely with respect to this coverage section, Subsection 11, of the General Terms and Conditions Section of this policy is deleted and replaced with the following:

This policy or any coverage section shall terminate at the earliest of the following times:

- a) ten (10) days after receipt by the **Parent Organization** of written notice from the Company in the event of non-payment.
- b) upon the receipt by the Company of written notice of termination from the **Parent Organization**.
- c) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations of this policy,
- d) sixty (60) days after the receipt by the Parent Organization of the Company's notice of nonrenewal. Such notice shall be in conformance with applicable federal, provincial and state laws and regulations, or
- e) at such time as may be agreed upon by the Company and the **Parent Organization**.

The Company under all circumstances shall refund any unearned premium computed on a pro rata basis.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew or a non-renewal.

<b>16. ADD CANCELLATION/EXTENDED REPORTING TIME PERIOD LIBERALIZATION</b>
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In the event that any time period relating to notice of cancellation or extended reporting period election provided under this coverage section is less than any such time period required by applicable law, the Company shall apply the applicable law.

<b>17. ADD BANKRUPTCY</b>
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Bankruptcy or insolvency of any **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defences under this policy.

In the event a bankruptcy is commenced by or against a **Sponsor Organization** pursuant to the Bankruptcy and Insolvency Act of Canada or the United States Bankruptcy Code, as amended, any similar law or any foreign equivalent thereof, the **Sponsor Organization** and the **Insured Persons** hereby agree to cooperate with any efforts by the Company, the **Sponsor Organization** or an **Insured Person** to obtain relief from any stay or injunction applicable to the distribution of proceeds under this policy to any **Insured Person**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

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Authorized Representative