



**BEAZLEY EXECUGUARD - MANAGEMENT LIABILITY INSURANCE POLICY  
FIDUCIARY LIABILITY COVERAGE SECTION**

**I. INSURING CLAUSES**

**A. Fiduciary Liability**

Underwriters shall pay on behalf of the **Insureds**:

1. all **Loss** resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**; or
2. all **Loss** resulting from any **Investigation** of any **Insured** first commenced during the **Policy Period** or **Optional Extension Period**, if applicable,

and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions.

**B. Voluntary Compliance Notice**

Underwriters shall pay on behalf of the **Insureds** in an amount not to exceed USD 100,000 any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice**. Such amount shall be subject to the Retention set forth in Item 5. of the Declarations and shall be part of and not in addition to the Limit of Liability set forth in Item 4. of the Declarations. This Insuring Clause shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the inception date of this Policy.

**C. Internal Appeal Coverage**

Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Internal Appeal** first made against any **Insured** during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause VIII.C. of the General Terms and Conditions.

**II. DEFINITIONS**

The following terms whenever used in this Coverage Section in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the General Terms and Conditions.

**A. "Administration"** means one or more of the following administrative duties or activities with respect to a **Plan**:

1. counseling or advising participants or beneficiaries;

2. providing interpretations;
  3. handling of records; or
  4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B. **“Administrator”** means a natural person with responsibility for **Administration** and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C. **“Benefits”** means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.
- D. **“Claim”** means:
1. a written demand or request for monetary damages or non-monetary or injunctive relief against any of the **Insureds**, or to toll or waive a statute of limitations;
  2. a civil, criminal (other than for a **HIPAA Wrongful Act**), arbitration, administrative, investigative or regulatory proceeding initiated against any of the **Insureds**;
  3. an arbitration, mediation or other alternative dispute resolution proceeding against any of the **Insureds**; or
  4. solely for the purpose of coverage afforded under Insuring Clause I.B., a **Voluntary Compliance Notice**,
- but shall not include any **Investigation** or **Internal Appeal**.
- E. **“Defense Costs”** means reasonable and necessary legal fees and expenses including reasonable and necessary expert fees to which Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** or **Internal Appeal**, in responding to any **Investigation** or participating in an **Voluntary Compliance Program** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization’s** overhead expenses.
- F. **“ERISA”** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), and any amendment or revision thereto, or any similar common or statutory law of the United States of America, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject. **ERISA** shall not

include any law concerning worker's compensation, unemployment insurance, social security, government mandated disability benefits or similar law.

- G. **"ESOP"** means any employee stock ownership plan as defined in **ERISA** or any **Plan** under which investments are made primarily in securities of the **Insured Organization**.
- H. **"ESOP Administration"** means one of more of the following administrative duties or activities with respect to an **ESOP**:
1. giving notice to employees, participants or beneficiaries;
  2. interpreting benefits;
  3. handling records; or
  4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries.

Provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Insured Organization**.

- I. **"Fiduciary"** means a fiduciary of a **Plan** as defined in **ERISA**.
- J. **"HIPAA Wrongful Act"** means:
1. a breach of fiduciary duty in the discharge of duties by an **Insured** in connection with a **Plan**; or
  2. any **Wrongful Act** of the type defined in Clause II.T. of this Coverage Section,

in violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and amendments thereto.

- K. **"Insured"** means any **Insured Person**, the **Insured Organization** and any **Plan**.
- L. **"Insured Person"** means:
1. all persons who were, now are, or shall be employees of the **Insured Organization** or a **Plan**; or directors, officers, trustees or **Managers** of the **Insured Organization** or a **Plan** in his or her capacity as a **Fiduciary** or **Administrator** of a **Plan** including all persons outside the United States of America serving in a functionally equivalent role; and

2. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** or **Investigation** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** or **Investigation** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner,

including their estates, heirs, legal representatives, trusts, estate planning vehicles or assigns in the event of their death, incapacity or bankruptcy.

- L. **“Internal Appeal”** means an appeal of an adverse benefits determination made by any of the **Insureds** pursuant to the U.S. Department of Labor's claim procedure regulation, 29 C.F.R. 2560.501-1(h) or similar claim procedures under applicable law.
- N. **“Investigation”** means any investigation of any of the **Insureds** of a possible violation of **ERISA** with respect to a **Plan** by the Department of Labor, the Pension Benefit Guaranty Corporation or any similar governmental agency located outside the United States of America.
- O. **“Loss”** means amounts which an **Insured** is legally obligated to pay as a result of a **Claim** (other than a **Voluntary Compliance Notice**), **Investigation** or **Internal Appeal** including damages, judgments (including prejudgment or postjudgment interest awarded against an **Insured** on that part of any judgment paid by Underwriters), settlements, verdicts, awards, statutory attorney's fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages.

However, **Loss** does not include:

1. the cost of providing non-monetary or injunctive relief (this provision does not apply to **Defense Costs** where non-monetary or injunctive relief is sought);
2. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
  - a) the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
  - b) the 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
  - c) **Voluntary Compliance Fees**;
  - d) penalties or other awards imposed by the Pension Ombudsman of England or Occupational Pensions Regulatory Authority of

England pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the UK Pensions Act 2004, as amended, and any rules and regulations promulgated thereunder, provided always that no part of the premium for this Policy attributable to this exception has been funded, paid or reimbursed from the funds or assets of any pension scheme insured under this Policy;

- e) civil penalties imposed upon an **Insured** under the Pension Protection Act of 2006 subject to a maximum sublimit of USD 250,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Fiduciary Liability Coverage Section;
- f) civil penalties imposed upon an **Insured** under Section 502(c) of **ERISA** subject to a maximum sublimit of USD 250,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Fiduciary Liability Coverage Section;
- g) the 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986; subject to a maximum sublimit of USD 250,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Fiduciary Liability Coverage Section. No Retention shall apply to **Loss** constituting the 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986;
- h) civil fines or penalties resulting from a **HIPAA Wrongful Act** subject to a maximum sublimit of USD 1,000,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Fiduciary Liability Coverage Section; or
- i) civil penalties under the Patient Protection and Affordable Care Act (PPACA), subject to a maximum sublimit of USD 250,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Fiduciary Liability Coverage Section;

3. **Benefits**, which are or may become due except to the extent:

- a) that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured's Wrongful Act**;
- b) that such sums are a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**,

including, but not limited to, the securities of the **Insured Organization** regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits”; or

- c) that such sums are **Defense Costs**;
- 4. any amounts for which the **Insureds** are legally or financially absolved from payment; or
- 5. any amounts or matters deemed uninsurable under the law pursuant to which this Coverage Section shall be construed.

With respect to the coverage for punitive, exemplary or multiple damages, and the insurability of fines or penalties under exception 2. above or amounts or matters under exception 5. above, any applicable law most favourable to the insurability of such damages, fines or penalties, amounts or matters shall apply, and where the **Insureds** are able to demonstrate in good faith (including presenting a written legal opinion) that such damages, fines, penalties, amounts or matters are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this provision, “any applicable law” shall include but not be limited to the law: a) where the **Claim, Investigation** or **Internal Appeal** seeking such damages was brought or commenced, b) where the **Wrongful Acts** or conduct giving rise to the **Claim, Investigation** or **Internal Appeal** seeking such damages took place, c) where the **Insureds** are incorporated, have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business.

P. “**Plan**” means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:

- 1. a welfare plan as defined in **ERISA** sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
- 2. a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
- 3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a

labor organization solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;

4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for employees of the **Insured Organization**;
  5. any other plan, fund or program which is included in the definition of **Plan** by written endorsement attached hereto;
  6. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the **Insured Organization** exclusively for the benefit of employees of the **Insured Organization**; or
  7. an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.
- Q. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Coverage Section shall be construed.
- R. **“Voluntary Compliance Notice”** means a written notice given to Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.
- S. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States of America, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.
- T. **“Wrongful Act”** means:
1. as respects a **Fiduciary**, a **Plan** or the **Insured Organization**:
    - a) any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or

- b) any matter claimed against an **Insured** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
- 2. as respects an **Administrator**:
    - a) any actual or alleged act, error or omission in the performance of **Administration**; or
    - b) any matter claimed against an **Administrator** by reason of his or her status as such;
  - 3. as respects an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Insured Organization**;
  - 4. any actual or alleged act, error or omission by an **Insured Person** in the performance of **ESOP Administration**;
  - 5. any actual or alleged act, error or omission by any **Insured** while acting in a settlor capacity in connection with a **Plan**;
  - 6. any **HIPAA Wrongful Act**; or
  - 7. any actual or alleged violation by any of the **Insureds** of Section 301 of the Labor Management Relations Act relating to alleged violations of collectively bargained contracts in connection with a **Plan**, as long as another act or matter described in 1. through 6. above is also alleged.

### III. EXCLUSIONS

Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from that portion of any **Claim**, **Investigation** or **Internal Appeal**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of any tangible property (including loss of use thereof);
- B. for any actual or alleged seepage, pollution or contamination of any kind; provided, however, that this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Insured Organization** which are owned by the **Plan**;
- C. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act;



- D. for liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan** as defined in this Coverage Section, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Wrongful Act** as respects a **Plan** taking place at any time when the **Insured Organization** did not sponsor such **Plan**;
- G. for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any law concerning workers' compensation, unemployment insurance, Social Security, or disability insurance, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law other than the Consolidated Omnibus Budget Reconciliation Act of 1985;
- H. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**;
- I. brought about or contributed to by:
  - 1. any deliberately fraudulent or deliberately criminal act or omission by any of the **Insureds**; or
  - 2. any personal profit or financial advantage gained by any of the **Insured Persons** to which they were not legally entitled,

as determined by a final non-appealable adjudication in the underlying action; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made.

With respect to Exclusion I.1. for acts or omissions which are treated as a criminal violation in a jurisdiction outside the United States of America that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such jurisdiction will not, by itself, be conclusive proof that a deliberately fraudulent or deliberately criminal act or omission occurred; or

- J. for costs and expenses incurred or to be incurred in connection with a **HIPAA Wrongful Act** to comply with an order, judgment or award of injunctive or equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including but not limited to actual or

anticipated costs and expenses associated with or arising from an **Insured's** obligation to comply with the Health Insurance Portability and Accountability Act of 1996.

#### IV. ACQUISITIONS

##### A. Sponsorship of Another Plan

In the event the **Insured Organization** becomes a sponsor of a plan, other than an **ESOP**, after the inception date of this Policy, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Insured Organization** is the surviving entity, and the total assets of such newly sponsored plan do not exceed 25% of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements, coverage shall be afforded for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** for such **Plans** whose total assets do exceed 25% of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements shall be afforded for a period of 90 days, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage beyond such 90 days shall only be available if:

1. written notice of such sponsorship is given to Underwriters by the **Insured Organization**;
2. the **Insured Organization** provides Underwriters with such information in connection therewith as the Underwriters may deem necessary;
3. the **Insureds** accept any special terms, conditions, exclusions or additional premium as may be required by Underwriters; and
4. Underwriters, at its sole discretion, agrees to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Coverage Section only for **Claims** or **Internal Appeals** relating to **ESOP Administration** and no coverage shall be granted for **Claims** or **Internal Appeals** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this Coverage Section and any related additional premium required by Underwriters has been paid.

##### B. Cessation of Plan Sponsorship and Termination, Sale or Spin-off of Plan

In the event a **Plan** ceases to be sponsored by the **Insured Organization** or ceases to be sponsored jointly by the **Insured Organization** and a labor organization after the inception date of this Policy, or in the event the **Insured Organization** terminates, sells or spins off any **Plan** before or after the inception

date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, coverage under this Policy with respect to such **Plan** and its **Insured Persons** shall continue until the end of the **Policy Period** for those who were **Insureds** at the time such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or who were **Insureds** at the time of such **Plan** termination, sale or spin-off or who would have been **Insureds** at the time of **Plan** termination, sale or spin-off if this Policy had been in effect, but only with respect to **Wrongful Acts** committed or conduct undertaken or allegedly committed or undertaken prior to the date such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or such **Plan** termination, sale or spin-off. The **Insureds** shall give notice to Underwriters of cessation of sponsorship as soon as practicable together with such information as Underwriters may require.

C. **Merged Plans**

In the event a **Plan** is merged with another **Plan** during the **Policy Period**, this Coverage Section shall continue to provide coverage for both **Plans** for as long as this Coverage Section shall remain in effect and subject to all the terms and conditions of this Coverage Section.

In the event a **Plan** is merged with another plan for which coverage is not provided under this Coverage Section, this Coverage Section shall continue to provide coverage only for the covered **Plan** for as long as this Coverage Section shall remain in effect and subject to all the terms and conditions of this Coverage Section for **Claims** or **Internal Appeals** with regard to **Wrongful Acts** or conduct which took place prior to the date the plans merged.