

Fiduciary Liability Insurance ("FLI Coverage Part")

Notice: Pursuant to section I. of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, and made part of, and are expressly applicable to this FLI Coverage Part, unless expressly stated to the contrary in either the General Terms and Conditions or in this FLI Coverage Part.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this policy the **Insurer** and **Insureds** agree as follows:

I. INSURING AGREEMENT

- (1) The **Insurer** shall pay on behalf of an **Insured**, **Loss** which the **Insureds** are legally obligated to pay resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged liability for any **Fiduciary Wrongful Act**.
- (2) Subject to the sub-limit of liability set forth in Item 6. of the Declarations, the **Insurer** shall pay any **Voluntary Compliance Loss** first identified by or assessed against an **Insured**, during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that circumstances giving rise to such **Voluntary Compliance Loss** results in a **Claim**.

II. DEFINITIONS

Whenever printed in boldface type, and whether in the singular or plural form in this policy, the following terms shall have the meanings indicated below.

- A. "**Administration**" means giving counsel or advice to **Employees** interpreting an **Employee Benefit Plan**; handling **Employee Benefit Plan** records; preparing, distributing or filing required notices or documents for an **Employee Benefit Plan**; determining or calculating **Employee Benefits**; or affecting enrollment, cancellation or termination, in connection with **Employee Benefits**.
- B. "**Claim**" means:
 - (1) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration, or any other alternative dispute resolution process;
 - (2) a proceeding for monetary, non-monetary, or injunctive relief which is commenced by:
 - a. service of a complaint or similar pleading or equivalent document in a **Foreign Jurisdiction**;
 - b. return of an indictment, information or similar document or equivalent document in a **Foreign Jurisdiction** (in the case of a criminal proceeding); or
 - c. receipt or filing of a notice of charges;
 - (3) a written notice of commencement of any fact finding investigation, whether or not a **Wrongful Act** is alleged, by the U.S. Department of Labor (DOL), Internal Revenue Service (IRS), or the Pension Benefit Guaranty Corporation ("PBGC") or any similar

governmental authority located outside the United States, including, but not limited to, the United Kingdom's Pensions Ombudsman or Pensions Regulator;

- (4) any **Internal Appeal**;
- (5) a written request to toll or waive the statute of limitations relating to any of the above.

Further, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

C. "**Defense Costs**" means the reasonable and necessary fees, costs and expenses (including costs of electronic discovery and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) consented to by the **Insurer** and resulting solely from the investigation, adjustment, defense and appeal of a **Claim** or costs to defend or oppose any **Voluntary Compliance Loss** against an **Insured**, but excluding wages, salaries, fees or any other compensation of officers or employees of the **Company**.

D. "**Employee Benefit Plan**" means any qualified or non-qualified plan, fund, trust or program, including, but not limited to any pension plan, welfare plan, health savings account plan, IRA-based plan, stock option plan, stock purchase plan, deferred compensation program, supplemental executive retirement program, top-hat plan, excess benefit plan, cafeteria plan, dependent care assistance program, fringe benefit plan or voluntary employees' beneficiary association as defined in the Internal Revenue Code of 1986, as amended, or **ERISA**, or in any similar state, local or foreign law or regulation, which was, is now, or becomes sponsored by the **Company** anywhere in the world exclusively for the benefit of the **Employees** of the **Company**; *provided however*, **Employee Benefit Plan** shall not include any multi-employer plan as defined in **ERISA**, or in any similar state, local or foreign law or regulation.

Employee Benefit Plan shall not include any employee stock ownership plan or any **Insured** thereof unless the **Insurer**, by specific endorsement hereto, agrees to afford such coverage. Any such coverage shall be subject to the terms, conditions and premium set forth in this policy and such endorsement.

E. "**Employee Benefits**" means benefits provided under an **Employee Benefit Plan** or under any workers' compensation insurance, unemployment insurance, disability insurance, social security, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

F. "**Fiduciary Wrongful Act**" means a breach of the duties, obligations and responsibilities imposed by **ERISA**, HIPAA, COBRA, or any similar state, local, or foreign law or regulation, by an **Insured** in the discharge of his, her or its duties as respects an **Employee Benefit Plan**; or

- (1) any matter claimed against an **Insured** solely because of the **Insured's** status as a fiduciary of an **Employee Benefit Plan**;
- (2) any negligent act, error or omission by an **Insured** in his, her or its settlor capacity with respect to an **Employee Benefit Plan**; or
- (3) any negligent act, error or omission by an **Insured** in the **Administration** of an **Employee Benefit Plan**.

G. "**HIPAA Fines and Penalties**" means civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.

H. "**Insured**" means **Insured Person(s)**, the **Company**, an **Employee Benefit Plan** and any **Oversight Committee**.

I. "**Insured Person**" means:

- (1) any natural person **Executive** or employee of the **Company** in his or her capacity as a fiduciary, administrator or trustee of an **Employee Benefit Plan**;
- (2) any natural person trustee, fiduciary, administrator, settlor or employee of an **Employee Benefit Plan**;
- (3) **Oversight Committee Member**; or
- (4) in the event of the death, incapacity or bankruptcy of an **Insured Person**, the estate, heirs, legal representatives or assigns of such **Insured Person**;
- (5) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable domestic or **Foreign Jurisdiction**) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; *provided, however*, that this extension shall not afford coverage for any **Claim** for any act, error or omission of the spouse or domestic partner, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.

Coverage will automatically apply to all new **Insured Persons** after the policy inception date.

J. “**Internal Appeal**” means an appeal of an adverse benefits determination by an **Insured** pursuant to the DOL's claim procedure regulation at 29 C.F.R. Section 2560.503-1 (h) or similar claim procedures pursuant to applicable law.

K. (1) “**Loss**” means:

- a. damages, judgments (including any award of pre-judgment and post-judgment interest), and settlements;
- b. **Defense Costs**;
- c. **Voluntary Compliance Loss**;
- d. 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 502 (l), of **ERISA** or any similar foreign law or regulation;
- e. Subject to the sub-limit of liability set for in item 6. of the Declarations, **HIPAA Fines and Penalties**;
- f. **UK Pensions Fines and Penalties**; and
- g. punitive, exemplary or multiple damages.

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

- a. taxes or tax penalties;
- b. civil or criminal fines or penalties, except for fines and penalties specified in paragraph (1) above;
- c. the return or reversion to any **Insured** of any benefit, contribution or asset of an **Employee Benefits Plan**, or return of any fees or sums charged to any **Employee Benefit Plan**;
- d. costs of compliance with any order for, grant of or agreement to provide non-monetary relief;
- e. benefits paid, due or which may become due under any **Employee Benefits Plan**, or benefits which would be due under an **Employee Benefit Plan** if such **Employee Benefit Plan** complied with all applicable law, except to the extent that (a) an **Insured** is a natural person fiduciary and the benefits are payable by such **Insured** as a personal obligation; and (b) payment of the benefits is for a covered **Fiduciary Wrongful Act** and is not indemnified by the **Company**;
- f. any amount for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or

- A. based upon, arising out of, or attributable to any remuneration, profit or other advantage to which an **Insured** was not legally entitled if established by any final and non-appealable adjudication in the underlying action adverse to such **Insured**;
- B. based upon, arising out of, or attributable to any deliberate criminal or deliberate fraudulent act if established by any final and non-appealable adjudication in the underlying action adverse to an **Insured**. Imposition of criminal fines, penalties, or sanctions pursuant to the law of a **Foreign Jurisdiction** shall not constitute, by itself, proof that an **Insured** has committed a deliberate criminal act or deliberate fraudulent act.
- C. for:
 - (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
 - (2) bodily injury, sickness, disease, and death of any person, injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy;
- D. based upon, arising out of, or attributable to any **Wrongful Act** of an **Insured Person** serving in their capacity as director, officer, trustee, governor or fiduciary or administrator of any other entity, plan, fund or program other than an **Employee Benefit Plan** as defined herein, or by reason of their status as director, officer, employee, trustee or governor of such other entity;
- E. based upon, arising out of, or attributable to, as of the applicable **Prior or Pending Date**:
 - (1) any prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation; or
 - (2) any **Wrongful Act** or **Related Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation;
- F. based upon, arising out of, or attributable to, or in any way involving:
 - (1) any **Wrongful Act** alleged in any matter which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period**, under any policy of which this **FLI Coverage Part** is a renewal or replacement of, in whole or part, or which it may succeed in time.
 - (2) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice in F.(1), would constitute **Related Wrongful Acts**;
- G. For discrimination in violation of any law other than **ERISA**;
- H. arising out of, based upon or attributable to failure to make contributions under or fund an **Employee Benefit Plan** in accordance with **ERISA** or any similar common or statutory law of the United States, any state thereof or any other jurisdiction or the terms of the **Employee Benefit Plan** document, or the failure to collect contributions owed under an **Employee Benefit Plan**; provided, however that this exclusion shall not apply to (1) **Defense Costs** incurred in the defense of a **Claim** for breach of fiduciary duty or (2) that portion of **Loss** that is payable as a personal obligation of an **Insured Person**;
- I. based upon, arising out of or attributable to any sum payable or liability assumed pursuant to the terms of any indemnification contract or agreement between an **Insured** and any actuary, administrator, advisor, consultant, third-party trustee, valuation company or any other service provider to an **Insured** or an **Employee Benefit Plan**;

- L. based upon, arising out of or attributable to, in whole or in part, any employee stock ownership plan (“ESOP”) or any **Insured** thereof unless the **Insurer**, by specific endorsement hereto, agrees to afford such coverage.
- N. based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided however this exclusion shall not apply to non-indemnifiable **Loss** arising from a **Claim** alleging damage to an **Employee Benefit Plan** other than **Cleanup Costs**.
- P. based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** under any express contract or agreement; *provided, however*, this exclusion shall not apply to liability that would attach in the absence of such express contract or agreement.
- Q. based upon, arising out of, or attributable to any **Wrongful Act** as respects an **Employee Benefit Plan** occurring prior to the date that such **Employee Benefit Plan** is sponsored by the **Company** or after the date such **Employee Benefit Plan** is sold, spun off or terminated by the **Company** or taking place at a time when the **Insured Person** was not an **Executive**, trustee, fiduciary, administrator, settlor or employee or **Oversight Committee Member** of such **Employee Benefit Plan**.

For the purpose of determining the applicability of any Exclusion, other than III.E. and III.F., the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any past, present, or future Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** shall be imputed to the **Company**.

IV. LIMIT OF LIABILITY AND RETENTION

Section III, LIMIT OF LIABILITY AND RETENTION, of the General Terms and Conditions, shall be amended to add the following provisions:

Limit of Liability

Sub-limit of Liability for Voluntary Compliance Loss

The **Voluntary Compliance Loss** sub-limit of Liability stated in Item 6. of the Declarations (“**Voluntary Compliance Loss Sub-limit**”) is the maximum aggregate limit of the **Insurer's** liability for all **Voluntary Compliance Loss** first identified or assessed against the **Insured** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment or the number of **Voluntary Compliance Loss** events. The **Voluntary Compliance Loss Sub-limit** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to the **FLI Coverage Part**. In the event the **Voluntary Compliance Loss Sub-limit** is exhausted by payment by the **Insurer**, or has been tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** with respect to any **Loss** subject to the **Voluntary Compliance Loss Sub-limit** shall be deemed to be completely fulfilled and extinguished.

Sub-limit of Liability for HIPAA Fines and Penalties

The **HIPAA Fines and Penalties** sub-limit of Liability stated in Item 6. of the Declarations (“**HIPAA Fines and Penalties Sub-limit**”) is the maximum aggregate limit of the **Insurer's** liability for all **HIPAA Fines and Penalties** arising out of all **Claims** first made against the **Insured** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment, the number of **Claims**, or the number of claimants. The **HIPAA Fines and Penalties Loss Sub-limit** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to the **FLI Coverage Part**. In the event the **HIPAA Fines and Penalties Sub-limit** is exhausted by payment by the **Insurer**, or has been tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** with respect to any **Loss** subject to the **HIPAA Fines and Penalties Sub-limit** shall be deemed to be completely fulfilled and extinguished.

Retention

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the Retention set forth in the Declarations as applicable to the **FLI Coverage Part**. Such Retention amount shall be borne by the **Insured** with regard to all **Loss**.

No Retention amount shall apply to **Loss** of an **Insured Person** in the event the **Company** is permitted or required to indemnify the **Insured Persons** but the **Company** is financially or legally unable to pay such **Loss** by reason of **Insolvency**.

If the **Company** fails or refuses in writing to advance, pay or indemnify **Loss** of an **Insured Person** within the applicable Retention for any reason (including but not limited to **Insolvency**) or if an **Insured Person** submits a written request to the **Company** for advancement, payment or indemnification of **Loss** incurred and the **Company** fails to provide, agree or acknowledge an obligation to provide such advancement, payment or indemnification within 90 days, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until such Retention is either satisfied or the **Company** provides such advancement, payment or indemnification.

If the **Insurer** pays any indemnification or advancement owed to an **Insured Person** by the **Company** within the applicable Retention, such amounts shall become due and owing as an obligation of the **Company** to the **Insurer** and the **Company** shall reimburse the **Insurer** for such amounts.

Any advancement or payment by the **Insurer** within the applicable Retention shall apply toward exhaustion of the applicable Limit of Liability.

The certificate of incorporation, by-laws and shareholder and board of director resolutions of any **Company** or **Outside Entity** shall be deemed to provide indemnification to the **Insured Person(s)** to the fullest extent permitted by law.

Notwithstanding the foregoing, no Retention shall apply to **Voluntary Compliance Loss** or **HIPPA Fines and Penalties**.

V. Defense, Cooperation, and Settlement

- A. The **Insurer** does not assume any duty to defend or investigate. The **Insureds** shall defend and contest any **Claim** made against them. The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention, inclusive of **Defense Costs**, for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.
- B. Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** to the **Insurer** arising under this **FLI Coverage Part**, which right shall be exercised in writing by the **Company** on behalf of all **Insureds**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Company**. Once the defense has been so tendered, the **Insureds** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Clause V; provided, however, the **Insurer** shall not be obligated to defend such **Claim** after the Limit of Liability has been exhausted.

In the event the **Insurer** assumes the defense of any **Claim**, the **Insurer** shall have the right to investigate and direct the defense (including but not limited to the selection of counsel to represent the **Insured**), conduct negotiations and, with consent of the **Insured**, settle any **Claim**. If the **Insured** refuses to consent to any settlement recommended by the **Insurer** and acceptable to the

claimant(s) then, subject to the applicable Limit of Liability, the **Insurer's** liability for such **Claim** will not exceed:

- (1) the amount for which the **Claim** could have been settled plus **Defense Costs** up to the date the **Insured** refused to settle such **Claim** (Recommended Settlement"); plus
- (2) Ninety percent (90%) of any **Loss** in excess of the Recommended Settlement incurred in connection with the **Claim**. The remaining ten percent (10%) shall be borne by the **Insured**.

In no event shall the **Insurer** be liable to defend any **Claim** after the applicable Limit of Liability has been exhausted.

- C. In the event that the **Insurer** has not assumed the defense of a **Claim** pursuant to paragraph V. B. above, at the written request of the **Insured**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured**, severally according to their respective interests, in the event and to the extent that the **Insured** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.
- D. Each **Company** and **Insured Person** shall provide the **Insurer** with full cooperation and such information as the **Insurer** may reasonable require. The **Insurer** shall have the right, but not the obligation, to effectively associate in the defense of any **Claim** that involves or appears reasonably likely to involve the policy, including but not limited to the negotiating of any settlement. The failure of any **Insured Person** to give the **Insurer** cooperation and information as required herein shall not impair the rights of any other **Insured Person** under this policy.
- E. If both **Loss** covered by this policy and **Loss** not covered by this policy are incurred, either because a **Claim** is made against both **Insureds** and others or because a **Claim** includes both covered and uncovered matters, the **Insureds** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of amounts between covered and uncovered loss taking into account the relative legal and financial exposure of the **Insureds**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this policy cannot be agreed to, then the **Insurer** shall advance such **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

VI. Notice

Section IV. NOTICE, of the General Terms and Conditions, shall be amended to add the following provisions:

Reporting a Voluntary Compliance Loss

The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this policy, notify the **Insurer** in writing of a **Voluntary Compliance Loss** as soon as practicable after such **Voluntary Compliance Loss** is first ascertained or assessed against an **Insured**, but in all such events no later than 60 days after the end of the **Policy Period** or the **Extended Reporting Period** (if applicable).

VII. Termination of Plan or Spin-off

If the **Company** sells, terminates or spins off an **Employee Benefits Plan** before or after the inception date of the **FLI Coverage Part**, coverage under this **FLI Coverage Part** with respect to such terminated **Employee Benefit Plan** shall continue for those who were an **Insured** at the time of the termination of the **Employee Benefit Plan**, with respect to **Fiduciary Wrongful Acts** committed or allegedly committed prior to or after the date the **Employee Benefits Plan** was terminated.

With respect to any **Employee Benefit Plan** that is sold, spun off or terminated, no coverage shall apply under this **FLI Coverage Part** for any **Wrongful Act** occurring after the date such **Employee Benefit Plan** is sold, spun off or terminated.

BERKLEY INSURANCE COMPANY

In witness whereof, the **Insurer** has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President



Secretary