

# OLD REPUBLIC INSURANCE COMPANY

## FIDUCIARY EXTENSION (INCLUDING HIPAA)

This endorsement modifies insurance provided under the following:

NON-PROFIT ORGANIZATION AND MANAGEMENT LIABILITY INSURANCE POLICY - (DUTY TO DEFEND)

It is understood and agreed that the insurance afforded under this Policy is extended as follows:

- 1. COVERAGE.** Subject to the Sublimit of Liability set forth in paragraph 6. below, the **Insurer** will pay on behalf of the **Insureds** a **Loss** which the **Insureds** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against any **Insureds** for a **Wrongful Act** which takes place during or prior to the **Policy Period**.
- 2. DEFINITIONS.** Solely with respect to coverage afforded by this Endorsement, the following definitions apply:

**"Administration"** means:

- a. advising, counseling or giving notice to employees, participants or beneficiaries with respect to any **Covered Plan**;
- b. providing interpretations with respect to any **Covered Plan**; or
- c. handling of records or effecting enrollment, termination or cancellation of employees, participants or beneficiaries under any **Covered Plan**.

**"Covered Plan"** means:

- a. any **Sponsored Plan**; and
- b. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees.

**"Insureds"** means the **Insured Persons**, the **Organization**, the **Covered Plan**, all regular salaried or hourly employees of the **Organization**, and any other natural person acting as a past, present or future fiduciary of any **Covered Plan**, including the estates, heirs or legal representatives of any deceased or legally incompetent **Insureds**.

**"Sponsored Plan"** means:

- a. any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in ERISA, which is operated by the **Organization** solely for the benefit of the employees or

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**Executive Officers** of the **Organization** located anywhere in the world and which existed on or before the inception date of the **Policy Period** or which is created or acquired after such inception date; provided (i) any coverage with respect to any such Plan created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed or allegedly committed after the effective date of such creation or acquisition and, (ii) as a condition precedent to coverage of such created or acquired plan, the **Insureds** shall give the **Insurer** full details in writing of such creation or acquisition within sixty (60) days of such creation or acquisition (thirty (30) days in the case of an employee stock ownership plan ("ESOP")) and shall pay within that time any additional premium and agree to any amendment of the provisions of this Policy required by the **Insurer**, in its absolute discretion, relating to such created or acquired plan.

- b. any other employee benefit plan or program not subject to ERISA which is sponsored solely by the **Organization** for the benefit of the employees or **Executive Officers**, including any fringe benefit or excess benefit plan;
- c. any other plan or program otherwise described in paragraphs a. or b. above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this coverage for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
- d. any other plan, fund, or program specifically included as a **Sponsored Plan** by endorsement to this coverage section.

**Sponsored Plan** shall not include any ESOP created or acquired by the **Organization** during the **Policy Period** (except as provided in a. above) or any multi-employer plan created before or during the **Policy Period**.

**"Wrongful Act"** means:

- a. any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of a Covered Plan (i) by the Employee Retirement Income Security Act of 1974 ("ERISA"); the Health Insurance Portability and Accountability Act of 1996 ("HIPPA"); or by any common or statutory law of the United States, any State or other jurisdiction to the extent such law is similar to ERISA or HIPPA.
- b. any other matter claimed against any **Insureds** solely because of the **Insured's** service as a fiduciary of any **Covered Plan**; or
- c. any negligent act, error or omission in the **Administration** of any **Covered Plan**.

Solely with respect to coverage afforded by this Endorsement, the term **"Insured Persons"** wherever it appears in this Policy is deleted and replaced with the term **"Insureds"** as defined in this Endorsement.

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3. **SECTION IV, EXCLUSIONS**, A. 9. and 10. shall not apply to coverage afforded by this Endorsement. Exclusion B. 2. shall not apply to coverage afforded by this Endorsement for any actual or alleged violation of HIPAA. All of the other Exclusions in **SECTION IV** of this Policy shall apply to coverage afforded by this Endorsement, regardless of whether such Exclusions otherwise apply to all or only some Insuring Agreements under this Policy. In addition to such other Exclusions, the **Insurer** shall not be liable under this Endorsement to make any payment for **Loss** as a result of a **Claim** made against an **Insured**:
- a. for the failure to fund or collect contributions owed to a **Covered Plan** from the **Organization** unless such failure is due to the negligence of the **Insured**;
  - b. for the return or reversion of any contributions or assets to the **Organization**; provided this exclusion shall not apply to **Defense Costs**;
  - c. arising out of, based upon or attributable to any **Covered Plan** investing in, owning or holding 25% or more of any class of any **Organization's** securities; or
  - d. for benefits due or to become due under the terms of a **Covered Plan** or benefits which would be due under a **Covered Plan** if such **Covered Plan** complied with all applicable laws, unless, and to the extent that, (1) such **Insured** is a natural person and such benefits are payable as a personal obligation by such person, and (2) recovery for such benefits is based upon a covered **Wrongful Act**; provided this exclusion shall not apply to **Defense Costs**.
4. **OTHER PROVISIONS**. Solely with respect to coverage afforded by this Endorsement, the definition of **Loss** shall include:
- a. the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended; or
  - b. any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of HIPAA, provided the **Insurer's** maximum aggregate liability for all such civil money penalties on account of all **Claims** first made during the **Policy Period** shall be [\$ \_\_\_\_\_]. Such amount shall be part of and not in addition to the sublimit set forth in Item 6. of this endorsement. Any such civil money penalties paid by the **Insurer** pursuant to this paragraph shall reduce the aggregate Limit of Liability for all Insuring Agreements under this Policy as set forth in Item 3. of the Declarations.
5. **RETENTION**. Solely with respect to coverage afforded by this Endorsement, the Retention: [\$ \_\_\_\_\_] for **Loss** arising from each **Claim** and all **Claims** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**.
6. **SUBLIMIT**. The **Insurer's** maximum aggregate liability for all **Loss** covered under this Endorsement as a result of all **Claims** first made against the **Insureds** during the **Policy Period** and the Extended Reporting

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Period (if applicable) shall be [\$ \_\_\_\_\_ ]. Such amount shall be part of and not in addition to the aggregate Limit of Liability for all Insuring Agreements under this Policy as set forth in Item 3. of the Declarations. Any **Loss** paid by the **Insurer** under this Endorsement shall reduce the aggregate Limit of Liability for all **Loss** under this Policy as set forth in Item 3. of the Declarations.

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