

<INSURANCE POLICY>
FIDUCIARY LIABILITY CLAUSE

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insureds** in an amount not to exceed \$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.

II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy 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. **"Application"** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other fiduciary liability policy issued by the Underwriters, of which this Policy is a renewal, replacement or which succeed it in time; and any publicly available documents that are filed by the **Named Insured** or **Plan** prior to the inception date of this Policy with the Internal Revenue Service ("IRS"), Department of Labor or Pension Benefit Guaranty Corporation (or for any similar federal, state, local or foreign regulatory agency).
- D. **"Benefits"** means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.

- E. **“Claim”** means:
1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
 2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charge, investigative order or similar document; or
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. any fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States;
 4. solely for the purpose of coverage afforded under Insuring Clause I.B., a **Voluntary Compliance Notice**; or
 5. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with Underwriters’ prior written consent, such consent not to be unreasonably withheld.
- F. **“Defense Costs”** means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the 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.
- G. **“ERISA”** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), and any amendment or revision thereto, or any similar common or statutory law of the United States, 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.
- H. **“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**.
- I. **“ESOP Administration”** means one or 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**.

- J. **“Executive Officer”** means any duly elected officer, director, natural person partner, principal, **Manager**, in-house general counsel or member of the **Insured Organization’s** legal department, trustee or **Administrator** or individual acting in a similar capacity with the **Insured Organization**.
- K. **“Fiduciary”** means a fiduciary of a **Plan** as defined in **ERISA**.
- L. **“Insured”** means any **Insured Person**, the **Insured Organization** and any **Plan**.
- M. **“Insured Person”** means all persons who were, now are, or shall be employees of the **Insured Organization** or a **Plan**; or duly elected or appointed 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 including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- N. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim**, other than a **Voluntary Compliance Notice**, including damages, judgments (including prejudgment or postjudgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, 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** shall not include:
1. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
 - a. the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
 - b. the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
 - c. **Voluntary Compliance Fees**; or
 - 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;

2. **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured's Wrongful Act**;
 3. any amounts for which the **Insureds** are legally or financially absolved from payment;
 4. matters deemed uninsurable under the law pursuant to which this Policy shall be construed; or
 5. any amounts incurred in defense of any **Claim** for which any other Underwriter has a duty to defend.
- O. **"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.
- P. **“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 Policy shall be construed.
- Q. **“Voluntary Compliance Notice”** means a written notice given to the Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.
- R. **“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, 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.
- S. **“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**; or

4. any actual or alleged act, error or omission by an **Insured Person** in the performance of **ESOP Administration**.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim**:

- 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. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or the **Plan** or any of their security holders, purchasers or sellers

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 Policy, 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 COBRA;

- 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. for **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of an **Insured Person**; provided, however this exclusion shall not apply to **Defense Costs**; or
- J. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - 1. any deliberately dishonest, fraudulent or criminal act, or omission by any of the **Insureds**; or
 - 2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made.

No **Wrongful Act** shall be imputed to any of the other **Insureds** for the purpose of determining the applicability of any of the Exclusions.

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 or by its own creation, and the total assets of such newly sponsored plan do not exceed twenty-five percent (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 twenty-five percent (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 ninety (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 ninety (90) days shall only be available if:

- 1. written notice of such sponsorship is given to the Underwriters by the **Insured Organization**;

2. the **Insured Organization** provides the 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 the Underwriters; and
4. the 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 Clause only for **Claims** relating to **ESOP Administration** and no coverage shall be granted for **Claims** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this Policy and any related additional premium required by the 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 the 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 allegedly committed 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 the Underwriters of cessation of sponsorship as soon as practicable together with such information as the Underwriters may require.

C. Merged Plans

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

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