

<Product Name>  
**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 Reporting Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insureds** any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice**. Such amount shall be subject to any sublimit specified in Item 4. of the Declarations and the Fiduciary Liability 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**

- 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”**, for purposes of the Fiduciary Liability Clause only, includes 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 the 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 (except that 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 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**.

- J. **“Executive Officer”** means the chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, 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 or trustees 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 post judgment 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**; or
  - c. **Voluntary Compliance Fees**;
- 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**; except that this exclusion shall not apply to 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 **Company** regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits”;

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 insurer 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 Section IV.A. below;
  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 Section IV.A. below;
  3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to 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 Section IV.A below;
  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;

except 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**; except that 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 final non-appealable adjudication; except that 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, in their sole discretion, agree to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Section IV. A. 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.

**V. SETTLEMENT AND DEFENSE**

A. The Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; except that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.

B. The **Insureds** shall cooperate with the Underwriters and, upon the Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then the Underwriters' consent shall not be required for such disposition.
- D. The Underwriters shall not be obligated to pay any **Loss** or **Defense Costs**, or to associate in the defense of any **Claim**, after the applicable Limit of Liability has been exhausted by payment of **Loss** or **Defense Costs**, or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment the Underwriters shall have the right to withdraw from the association in any further defense of the **Claim** without further liability by tendering full control of said defense to the **Insured**.
- E. The Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
  - 1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
  - 2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

## VI. ALLOCATION

If both **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:

- 1. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- 2. settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds**' or non-**Insureds**' exposure to non-covered loss, and the **Insureds**' exposure to covered **Loss**. In making such allocation determination, the **Insureds** and the Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to,

then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

**VII. ORDER OF PAYMENT**

In the event of **Loss**, for which payment is due under the provisions of this **Fiduciary** Liability Clause, which exceeds the remaining aggregate limit of liability, then the Underwriters shall:

1. first, pay **Loss** for which coverage is provided under this **Policy** for any **Insured Person**;
2. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for any **Plan**; and
3. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for the **Insured Organization**.