

## **FIDUCIARY LIABILITY INSURING AGREEMENT**

In consideration of the premium paid and in reliance upon all statements made and information contained in the Declarations and **Application**, the **Insurer** and the **Insured** agree that coverage will be provided subject to all of the terms, conditions and limitations of this Insuring Agreement, as follows:

1. The attached **Policy** is amended by adding the following Insuring Agreements:

### **FIDUCIARY LIABILITY INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of a **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if exercised, for an **ERISA Wrongful Act**.

### **PRE-CLAIM LABOR INVESTIGATORY INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insureds**, all **Pre-Claim Labor Investigatory Costs** incurred by the **Insureds** as a result of a **Pre-Claim Labor Investigation**, first commenced during the **Policy Period**, provided that as a condition precedent to coverage provided herein, the **Insureds** must notify the **Insurer** within 30 days of discovery of the **Pre-Claim Labor Investigation**.

The Retention and Limit of Liability for the Pre-Claim Labor Investigatory Insuring Agreement will be the same as the Retention and Limit of Liability for Fiduciary Liability Insuring Agreement as set forth in Items 9 and 10 of the Declarations. The Limit of Liability for Pre-Claim Labor Investigatory Cost Coverage constitutes a sublimit and therefore shall be part of, and not in addition to the Fiduciary Liability Insuring Agreement Limit of Liability set forth in Item 9 of the Declarations.

### **VOLUNTARY COMPLIANCE PROGRAM INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insured**:

- (1) **Voluntary Compliance Program Fees** with respect to a **Voluntary Compliance Program Notice** first given to the **Insurer** during the **Policy Period** or the Extended Reporting Period, provided that the **Voluntary Compliance Program Fees** are incurred after such **Voluntary Compliance Program Notice** is first given to the **Insurer**; and
- (2) **Defense Costs** with respect to a **Voluntary Compliance Program Notice** first given to the **Insurer** during the **Policy Period** or the Extended Reporting Period, provided that the **Defense Costs** are incurred after such **Voluntary Compliance Program Notice** is first given to the **Insurer**

The **Insurer's** maximum Limit of Liability for all **Voluntary Compliance Program Fees** and **Defense Costs** with respect to all **Voluntary Compliance Program Notices** shall be \$100,000. Such amounts will be included within and not in addition to the Fiduciary Liability Insuring Agreement Limit of Liability set forth in Item 9 of the Declarations. For purposes of the coverage afforded by this Insuring Agreement only, no Retention shall apply.

2. Section II, entitled "Additional Coverages," is deleted in its entirety.

3. For the purpose of the coverage afforded by this Insuring Agreement, all of the terms and conditions set forth in the **Policy** and any amendments thereto shall apply except:
- A. Section II (B), entitled "Not-for-Profit Directorships", is deleted.
  - B. Section IV, entitled "Definitions", is amended to add the following:

**Administration** means counseling **Employees** with respect to, interpreting, handling records in connection with, or effecting enrollment or cancellation of **Employees** under any **Employee Benefit Plan**.

**Benefit Claim Denial** means an appeal of an adverse benefits determination by an **Insured** pursuant to the U.S. Department of Labor's claim procedure regulation at 29 C.F.R. Section 2560.503-1(h) or any similar claim procedures pursuant to applicable law.

**Employee Benefit Plan** means any **Employee Welfare Benefit Plan** or any **Employee Pension Benefit Plan** operated solely by the **Company** or jointly by the **Company** and a labor organization for the benefit of the **Employees** of the **Company**.

**Employee Pension Benefit Plan** means any plan, fund, or program established or maintained by the **Company** for its **Employees**, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program provides retirement income to **Employees** or results in a deferral of income by **Employees** for periods extending to the termination of employment or beyond.

**Employee Welfare Benefit Plan** means any plan, fund, or program established or maintained by the **Company** for its **Employees** for the purpose of providing benefits for its participants or their beneficiaries, through the purchase of insurance or otherwise, including:

- (1) medical, surgical, or hospital care or benefits; benefits in the event of sickness, accident, disability, death or unemployment; vacation benefits, apprenticeship or other training programs; day care centers; scholarship funds; prepaid legal services; or
- (2) any benefit described in Section 186(c) of **ERISA**.

**ERISA Wrongful Act** means a **Wrongful Act** relating to the violation of any of the responsibilities, obligations or duties imposed by **ERISA**, any regulations applicable thereto, or any common law or statutory law relating to any **Employee Benefit Plan** or the **Administration** of any **Employee Benefit Plan**.

**HIPAA Civil Money Penalties** means any civil money penalties imposed upon an **Insured** for such **Insured's** violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended.

**Pre-Claim Labor Investigation** means a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority, of an **Insured**, that is commenced by an **Insured's** receipt of a written document from such governmental authority, identifying such **Insured** or the **Company** as the target of an

investigation relating to the **Company's** responsibilities, obligation or duties imposed by ERISA, any regulations applicable thereto, or any common law or statutory law relating to any **Employee Benefit Plan** or the **Administration** of any **Employee Benefit Plan**.

A **Pre-Claim Labor Investigation** does not include routine regulatory or financial audits, examinations, hearings, inspections or reviews.

**Pre-Claim Labor Investigatory Costs** means reasonable and necessary legal fees and expenses consented to by the Insurer, such consent not to be unreasonably withheld, and incurred by the **Insured** solely in connection with the preparation for and response to a **Pre-Claim Labor Investigation**. **Pre-Claim Labor Investigatory Costs** do not include salaries, wages, overhead, or benefit expenses.

**Voluntary Compliance Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to the Voluntary Correction Program, as described in the Employee Plans Compliance Resolutions System ("EPCRS"), IRS Rev. Proc. 2006-27, as amended, the Voluntary Compliance Resolution Program, the Walk-In Closing Agreement Program, the Tax Sheltered Annuity Voluntary Correction Program ("TVC"), the Audit Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Delinquent Filer Voluntary Compliance Program, or the Voluntary Fiduciary Correction Program.

**Voluntary Compliance Program Fees** means fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent non-compliance by an **Employee Benefit Plan** with any statute, rule or regulation. **Voluntary Compliance Program Fees** shall not include:

- (1) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or
- (2) any fees, fines, penalties or sanctions relating to an **Employee Benefit Plan** which, as of the earlier inception of this **Policy** or the inception of the first **Policy** of which this **Policy** is a renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

**Voluntary Compliance Program Notice** means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

- C. Section IV, entitled "Definitions", is further amended to delete and replace the definition of **Claim**, **Insured**, and **Loss** as follows:

**Claim**, either in singular or plural, means any of the following instituted against an **Insured**:

- (1) a written demand, other than a **Pre-Claim Labor Investigation** or a **Voluntary Compliance Program Notice**, for monetary damages or non-monetary relief that is received during the **Policy Period** or, if applicable, Extended Reporting Period by an **Insured**;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by a return of an indictment;

- (4) a written demand for an arbitration or mediation proceeding in which monetary damages are sought;
- (5) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
- (6) a written request to toll or waive a statute of limitations, relating to a potential **Claim** described in Subsections (1) through (5) above;
- (7) solely with respect to a criminal proceeding: (a) an arrest; (b) the return of an indictment, information or similar document; or (c) the receipt of an official request for extradition;
- (8) a written notice of commencement of a **Benefit Claim Denial**, if it is reported to the **Company** in writing during the **Policy Period**;
- (9) with respect to the Pre-Claim Labor Investigatory Insuring Agreement only, a **Pre-Claim Labor Investigation** that is commenced during the **Policy Period** or, if applicable, Extended Reporting Period;
- (10) with respect to the Voluntary Compliance Program Insuring Agreement only, a **Voluntary Compliance Program Notice** that is received during the **Policy Period** or, if applicable, Extended Reporting Period;
- (11) an investigation of an **Insured Person**, solely in his or her fiduciary capacity with respect to any **Employee Benefit Plan**, commenced by the **Insured Person's** receipt of a written document from an Enforcement Unit identifying such **Insured Person** as the target of an investigation, including a Wells Notice, target letter or search warrant; or
- (12) a written request upon an **Insured Person** for witness testimony or document production, commenced by the service of a subpoena or other similar document compelling such testimony or production of documents; provided that the **Company** has agreed to indemnify the **Insured Persons** for the costs incurred for complying with such requests

for an **ERISA Wrongful Act**, including any appeals from such proceedings.

**Insured**, either in singular or plural, means the **Insured Persons**, the **Company**, any **Employee Benefit Plan** existing before the **Policy Period**, any **Employee Benefit Plan** created during the **Policy Period**, and any **Employee Benefit Plan** acquired during the **Policy Period** pursuant to Section XI.

**Loss** means **Pre-Claim Labor Investigatory Costs**, **Voluntary Compliance Program Fees**, **Defense Costs** and any amount which the **Insured** is legally obligated to pay resulting from a **Claim**, including damages, judgements, settlements and pre- and post-judgment interest. **Loss** shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has an adequate relationship to the relevant **Insured**. **Loss** shall not include:

- (1) taxes, criminal or civil fines or penalties imposed by law, except with respect to:
  - (i) any **Voluntary Compliance Program Fees**; and
  - (ii) **HIPAA Civil Money Penalties**;
- (2) the payment of insurance plan benefits the claimant may have been entitled to as an **Insured Person**, including but not limited to benefits payable pursuant to ERISA or Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended;

- (3) any unpaid, unrecoverable or outstanding amounts resulting from a loan, lease or extension of credit to any customer or any forgiveness of debt, including any unpaid, unrecoverable or outstanding amounts resulting from a loan, lease or extension of credit that has been sold;
  - (4) costs to comply with any non-monetary or injunctive relief of any kind or any agreement to provide such relief, including but not limited to any damages, costs or expenses incurred in making an accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local laws, rules or similar legal authority, or in complying with any other federal, state or local laws, rules or similar legal authority;
  - (5) any amounts incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of hazardous materials;
  - (6) any amounts the **Company** is obligated to pay or has paid pursuant to any written or oral contract or agreement unless agreed to by the **Insurer**;
  - (7) arising out of or in any way involving the depreciation (or failure to appreciate) in value of any investment product, including but not limited to securities, commodities, currencies, options or futures, but only to the extent that such investment product's depreciation (or failure to appreciate) is due to market fluctuation;
  - (8) any restitution or disgorgement, or the payment of **Loss** (other than **Defense Costs**) which is attributable to restitution or disgorgement, or similar payments arising out of, or relating to, restitution or disgorgement, including but not limited to the return of fees, commissions or charges for the **Company's** services; or
  - (9) any matters which are uninsurable under the law pursuant to which this Insuring Agreement shall be construed.
- D. All of the exclusions set forth in Section V of the **Policy**, entitled "Exclusions Applicable to all Insuring Agreements", shall apply except the "ERISA Exclusion," the "Insolvency Exclusion," and the "Insured vs. Insured Exclusion," which are deleted.
- E. Section V of the **Policy**, entitled "Exclusions Applicable to all Insuring Agreements", is further amended to add the following:
- Bonding/Insurance Company Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** that is brought directly or indirectly by or for the benefit of any insurance carrier or bond carrier of the **Company**, or any affiliate of the **Company**, regardless in whose name such **Claim** is actually made.
- Failure to Collect Contribution/Benefits Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** for:
- (1) the failure to collect contributions owed to an **Employee Benefit Plan** or other **Employee Program** unless such failure is due to the negligence of the **Insured**;
  - (2) the return or reversion to an employee of any contribution or asset; or

- (3) benefits which would be due under any **Employee Benefit Plan** if such **Employee Benefit Plan** complied with all applicable law, including but not limited to **Loss** resulting from the payment of plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits.

**Violation of Employment Law Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving an actual or alleged violation of the responsibilities, obligations or duties imposed by any Worker's Compensation, Unemployment Insurance, Social Security or disability benefits law, the Fair Labor Standards Act, National Labor Relations Act, Worker Adjustment and Retraining Notification Act, Occupational Safety and Health Act, any rules or regulations promulgated under any of the above statutes, or similar provisions of any federal, state or local statutory, administrative or common law.

- F. Section V of the **Policy**, entitled "Exclusions Applicable to All Insuring Agreements", is amended to delete and replace the Bodily/Personal Injury and Property Damage Exclusion and the Contract Exclusion, as follows:

**Bodily/Personal Injury and Property Damage Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** for actual or alleged bodily injury, sickness, disease, or death of any person, damage to or destruction of any tangible or intangible property including loss of use thereof, wrongful entry, slander of title, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, mental anguish, emotional distress, loss of consortium, invasion of privacy, defamation, false light, libel, or slander. But this exclusion does not apply to claims for mental anguish or emotional distress arising directly from an **ERISA Wrongful Act**.

**Contract Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the assumption of any liability to defend, indemnify, or hold harmless any person or entity, other than an **Insured Person**, under any written contract or agreement unless such liability:

- (1) would be imposed regardless of the existence of such contract or agreement; or
- (2) was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Employee Benefit Plan** was established.

- G. Section VI (A) of the **Policy**, entitled "Limit of Liability", is amended to add the following Subsection:

- (4) The Limit of Liability for all **Loss**, in connection with **HIPAA Civil Money Penalty Claims** described above will be \$100,000 which amount will be included within, and not in addition to the Fiduciary Limit of Liability set forth in Item 9 of the Declarations.

- (6) The **Insurer** agrees to provide, without additional charge, a one-time reinstatement of the Limit of Liability under this Insuring Agreement to the extent such Limit of Liability is diminished by paid **Loss** resulting from paid **Claims** under this Insuring Agreement. Should a **Claim** exhaust the Limit of Liability under this Insuring Agreement, the Limit of Liability will only be reinstated for subsequent **Claims**. This reinstatement shall not serve to increase the Limit of Liability for any single **Claim**.
- H. Section VI(B) of the **Policy**, entitled "Retention and Indemnification", is amended to add the following Subsection:
- (5) The retention applicable to **Claims** for **HIPAA Civil Money Penalties** shall be \$0.
- I. Section VII of the **Policy**, entitled "Non-Erosion of Insuring Agreement A and Order of Payments", is amended to add the following Subsection:

C. **ORDER OF PAYMENTS IN EVENT OF LIQUIDATION OR REORGANIZATION**

With respect to any **Claim** first made against the **Insureds** during the **Policy Period**, regardless of whether such **Claim** is first made before or after the effective date of this endorsement:

If a liquidation or reorganization proceeding is commenced pursuant to the United States Bankruptcy Code or any similar state or local law by or against the **Insured** (or any such organization in its capacity as a debtor in possession under the United States bankruptcy law) or any subsidiary of such organizations, and in the event payment of **Loss** is due under this coverage section but, in the sole discretion of the Insurer, the amount of such **Loss** in the aggregate potentially exceeds the remaining available Limit of Liability for this coverage section, the **Insurer** shall:

- (1) first pay such covered **Loss** incurred by the **Insured Persons** and the **Employee Benefit Plans**; then
- (2) to the extent of any remaining amount of the Limit of Liability available after payment under (a) above, pay such covered **Loss** incurred by the **Insured**. Except as otherwise provided in this endorsement, the **Insurer** may pay covered **Loss** as it becomes due under this **Policy** without regard to the potential for other future payment obligations under this **Policy**.

- J. Section X of the **Policy**, entitled "Notice of Claims and Potential Claims", is deleted and replaced by the following:

**SECTION X - NOTICE OF CLAIMS AND POTENTIAL CLAIMS**

- A. The **Insured**, as a condition precedent to any rights under this **Policy**, shall give the **Insurer** written notice, as soon as practicable, of any **Claim** first made and brought to the attention of an **Executive Officer** during the **Policy Period** or the Extended Reporting Period, but in no event later than 90 days after the **Claim** is made.

- B. If during the **Policy Period**, an **Executive Officer** first becomes aware of circumstances which may give rise to a **Claim**, and gives written notice to the **Insurer** of the circumstances and reasons for anticipating a **Claim**, then any **Claim** subsequently arising from such circumstances, or from the **Voluntary Compliance Program Notice** referred to above, shall be deemed to have been first made during the **Policy Year** in which such notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Claims**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Claim**, as well as the identity of the potential plaintiffs and the causes of action to be asserted.
- C. All notices required to be given to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5 of the Declarations.
4. This Insuring Agreement shall be effective as of 12:01 a.m. on [ENDORSEMENTEFFDT].

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the **Policy** other than as above stated.