

## I. INSURING AGREEMENT

The Insurer shall pay on behalf of **Named Company**, any **Subsidiary**, any **Plan** or any **Insured Person Loss** resulting from any **Claim** first made against the **Named Company Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by such **Named Company Insured** or by any natural person for whose **Wrongful Act** such **Named Company Insured** is legally responsible.

## II. DEFINITIONS

For purposes of coverage under this Coverage Part:

1. **Claim** means:
  - a. a written demand for monetary damages or non-monetary relief,
  - b. a civil or criminal adjudicatory proceeding or arbitration,
  - c. a formal administrative or regulatory adjudicatory proceeding, or
  - d. a formal civil, criminal, administrative or regulatory investigation, against any **Named Company Insured**, including any appeal therefrom.
2. **Insured Persons** means all natural persons who were, now are, or hereafter become duly elected or appointed directors, trustees and/or officers of, or employees of, **Named Company** or any **Subsidiary** or **Plan**, and managers in the event the **Named Company** or **Subsidiary** is a limited liability company.
3. **Loss** means damages, settlements, judgments (including any award of pre-judgment and post-judgment interest) and **Defense Costs** for which **Named Company**, any **Subsidiary**, any **Plan** or any **Insured Person** is legally obligated to pay on account of a covered **Claim**. **Loss** shall not include: (i) taxes; (ii) any amounts for which there is no legal recourse against **Named Company**, any **Subsidiary**, any **Plan** or the **Insured Persons**; or (iii) matters which are uninsurable under the law pursuant to which this Policy shall be construed. **Loss** shall include punitive, exemplary or multiple damages, if insurable, to the fullest extent permitted by any applicable law. Where the **Named Company Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.
4. **Pension Plan** means any employee pension benefit plan as defined in 29 U.S.C. §1002 subject to regulation under **ERISA** or any **Similar Act**. **Pension Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002 or an employee stock ownership plan as defined in 26 U.S.C. §4975.
5. **Plan** means:
  - a. any **Welfare Plan** which was, is now, or hereafter becomes, sponsored solely by **Named Company** or any **Subsidiary**, or sponsored jointly by **Named Company** or any **Subsidiary** and a labor organization, solely for the benefit of the employees of **Named Company** or any **Subsidiary**;
  - b. any **Pension Plan** which was, on or prior to the effective date of this Policy, sponsored solely by **Named Company** or any **Subsidiary**, or sponsored jointly by **Named Company** or any **Subsidiary** and a labor organization, solely for the benefit of the employees of **Named Company** or any **Subsidiary**;

- c. any **Pension Plan** which, after the effective date of this Policy, becomes sponsored solely by **Named Company** or any **Subsidiary**, or jointly by **Named Company** or any **Subsidiary** and a labor organization, solely for the benefit of the employees of **Named Company** or any **Subsidiary**, if and to the extent coverage with respect to the **Pension Plan** is afforded pursuant to Section **XIV.1** of the General Terms & Conditions of this Policy; or
  - d. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of **Named Company** or any **Subsidiary**.
6. **Welfare Plan** means any employee welfare benefit plan as defined in 29 U.S.C. §1002 subject to regulation under **ERISA** or any **Similar Act**. **Welfare Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002.
7. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty by the **Named Company Insureds** in the discharge of their duties in their capacities, or solely by reason of their status as fiduciaries or administrators (as defined in **ERISA** or any **Similar Act**) of any **Plan**, including without limitation (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plans**, (ii) providing interpretations with respect to any **Plan**, (iii) handling records in connection with any **Plan**, (iv) enrolling, terminating or canceling employees under any **Plan**, or (v) otherwise performing or failing to perform **ERISA** or any **Similar Act** obligations relating to any **Plan**.

### III. EXCLUSIONS

1. Exclusions Applicable to All Loss

The Insurer shall not be liable to pay any **Loss** under this Coverage Part in connection with any **Claim** made against **Named Company Insureds**:

- a. for any actual or alleged libel, slander, bodily injury, sickness, disease, emotional distress, mental anguish or death of any person, or damage to or destruction of any tangible property including loss of use;
- b. based upon, directly or indirectly arising out of, or in any way involving:
  - (1) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any prior policy, in whole or in part; or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;
- c. based upon, directly or indirectly arising out of, in any way involving or constituting any civil, criminal, administrative or regulatory proceeding, investigation or arbitration against any of the **Named Company Insureds**:
  - (1) pending prior to or on the Prior or Pending Date set forth in the Coverage Schedule of the Declarations; or
  - (2) which has been the subject of any notice given under any prior policy, regardless whether such prior policy affords coverage for such proceeding, investigation, or arbitration;

or any fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration;

- d. based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Named Company Insureds** test for, monitor, clean up, remove,

contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to **Named Company** or any **Subsidiary**, their security holders, or their creditors resulting from any of the aforementioned matters;

- e. where it is established in a final adjudication by the judge, jury or arbitrator in such **Claim** that such **Named Company Insured** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**; and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **Named Company** and any **Subsidiary** and **Plan**;
- f. where it is established in a final adjudication by the judge, jury or arbitrator in such **Claim** that such **Named Company Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage or intentionally violated any statute, rule, regulation, agreement or judicial or regulatory order with actual knowledge of such violation or with intent to cause damage. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**; and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **Named Company** and any **Subsidiary** and **Plan**;
- g. based upon, directly or indirectly arising out of or in any way involving liability of others assumed by any **Named Company Insured** under any contract or agreement, except in accordance with the terms of the Instrument or Declaration of Trust pursuant to which any **Plan** is established;
- h. based upon, directly or indirectly arising out of or in any way involving the failure of **Named Company** or any **Subsidiary** to procure or maintain insurance or bonds on **Plan** assets;
- i. for discrimination in violation of any law other than **ERISA** or any **Similar Act**; or
- j. for:
  - (1) any **Wrongful Act** by **Insured Persons** or **Plans** of any **Subsidiary**, or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**.

2. Exclusions Applicable to a Portion of Loss

The Insurer shall not be liable under this Coverage Part to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

- a. criminal or civil fines or penalties imposed by law, provided this exclusion shall not apply to the 5% or less, or the 20% or less, civil penalties imposed upon a **Named Company Insured** under §502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
- b. (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (iii) that portion of any settlement or judgment which constitutes benefits. However, this exclusion does not apply to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by a **Named Company Insured** who is a natural person and such benefits are payable as a personal obligation of such **Named Company Insured**;
- c. contributions owed by **Named Company** or any **Subsidiary** to any **Plan** for which any of the **Named Company Insureds** failed to collect; or

- d. any amount which constitutes the return or reversion to **Named Company** or any **Subsidiary** of any contribution or asset of any **Plan**.

For the purpose of determining the applicability of any exclusion set forth in this subsection 2, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**.

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