

I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, resulting from any **Claim** first made against any **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by such **Insured** or by any natural person for whose **Wrongful Act** such **Insured** is legally responsible. Provided, however that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

II. EXCLUSIONS

A. 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 any **Insured**:

1. Assumed Liability

based upon or arising out of liability of others assumed by any **Insured** under any contract or agreement, however, this exclusion shall not apply to the extent that:

- a. the **Insured** would have been liable in the absence of such contract or agreement; or
- b. the liability was assumed in accordance with or under the trust instrument or equivalent documents governing the assets of the **Plan**;

2. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or **Property Damage**;

3. Discrimination

for discrimination in violation of any law other than **ERISA or any Similar Act**;

4. Illegal Profits/Deliberate Acts

where:

- a. such **Insured** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled; or,
- b. such **Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage;

as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;

For purposes of determining the applicability of this exclusion:

- i. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and,
- ii. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**; or past, present or future trustee or **Administrator** of a **Plan** shall be imputed to all **Plans**;

5. Prior Notice

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or

- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

6. **Prior or Pending**

based upon or arising out of or constituting any administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Management Liability Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

7. **Prior Wrongful Acts of Subsidiaries**

for:

- a. 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,
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

8. **Pollutants**

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- b. any request, direction or order that any of the **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
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity** or the **Plan**, their security holders, or their creditors resulting from any of the aforementioned matters.

However this exclusion shall not apply to:

- i. any **Claim** by or on behalf of a beneficiary of or participant in any **Plan** by reason of the diminution in value of any securities (other than the **Insured Entity's** securities) owned by the **Plan**, resulting from, or allegedly resulting from, any of the aforementioned matters; or
- ii. **Non-Indemnifiable Loss**.

B. Exclusions Applicable to Loss Other than Defense Costs

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

1. **Benefits Due**

benefits due or to become due under any **Plan**, or benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:

- a. an **Insured Person** is legally obligated to pay such benefits as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
- b. the **Claim** alleges that a covered **Wrongful Act** caused or contributed to a reduction or loss in the value of the Plan's assets and/or to the accounts of such **Plan's** participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as benefits or held by a court to be benefits;

2. **Non-Monetary Relief**



any costs incurred by an **Insured** to comply with any order for remedial, preventive, injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;

3. **Owed Contributions**

an employer's contributions owed to a **Plan**.

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

III. SUPPLEMENTARY PAYMENTS

The Insurer shall reimburse the **Insured**, subject to the aggregate Limit of Liability, up to \$150,000.00 for **Compliance Costs** incurred during the **Policy Period** in connection with any **Voluntary Compliance Programs** provided the **Insured** gives prior written notice to the Insurer of its intent to enter into such **Voluntary Compliance Programs** during the **Policy Period**. This supplementary payment is part of and not in addition to the Limit of Liability for the Fiduciary Liability **Coverage Part** stated in the Management Liability **Coverage Part** Declarations. No retention applies to this supplementary payment.