

This endorsement, effective at 12:01 AM

forms a part of

Policy number

Issued to:

By:

**NOT-FOR-PROFIT RISK PROTECTOR®
SMALL BUSINESS AMENDATORY ENDORSEMENT
(D&O, EPL & FLI COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that, unless modified by another endorsement to this policy, the Declarations, General Terms and Conditions, D&O Coverage Section (if purchased) , EPL Coverage Section (if purchased), and FLI Coverage Section (if purchased) are amended as follows:

I. AMENDMENTS TO THE DECLARATIONS

A. NOTICE PROVISIONS

The second and third paragraphs of the "NOTICES" provisions of the Declarations are deleted in their entirety and replaced with the following:

NOTICE: COVERAGE WITHIN THIS POLICY IS GENERALLY LIMITED TO LOSS FROM CLAIMS FIRST MADE AGAINST INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER AS THE POLICY REQUIRES. AS SET FORTH IN CLAUSE 5 OF THE GENERAL TERMS AND CONDITIONS, THERE IS AN ADDITIONAL LIMIT OF LIABILITY FOR DEFENSE COSTS FOR THE D&O, EPL AND FLI COVERAGE SECTIONS (IF PURCHASED). ONCE THAT ADDITIONAL LIMIT OF LIABILITY FOR DEFENSE COSTS IS EXHAUSTED, AMOUNTS INCURRED FOR DEFENSE COSTS SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

B. LIMIT OF LIABILITY

Item 3 of the Declarations is amended to add the following to the end thereof:

3B	ADDITIONAL LIMIT OF LIABILITY FOR DEFENSE COSTS (Separate or Shared, as Set forth above)		
		Liability Coverage Section	Limit of Liability
	D&O	D&O and Organization	\$ENTER AMOUNT OF LIMIT
	EPL	Employment Practices Claims	\$ENTER AMOUNT OF LIMIT
	FLI	Fiduciary Liability Claims	\$ENTER AMOUNT OF LIMIT

II. AMENDMENTS TO GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are amended as follows:

A. DEFINITIONS AMENDED

1. Clause 2. **DEFINITIONS** is amended as follows:

a. Paragraph (f) is amended to include the following at the end thereof:

Defense Costs shall also include a \$300 per day per **Individual Insured** supplemental payment for attendance, at the request or with the consent of the Insurer, by such **Individual Insured** at hearings, trial or depositions. Such payments shall not exceed \$10,000 in the aggregate for all **Individual Insureds** with regard to all **Claims**.

b. Paragraph (r) is deleted in its entirety and replaced with the following:

(r) **"Organization"** means: (1) the **Named Organization**; (2) any **Subsidiary** thereof; (3) any **Affiliate** thereof listed by endorsement to this policy, but solely with respect to the **Coverage Sections** indicated on such endorsement; and (4) the debtor-in-possession (or equivalent status outside the United States) in the event a bankruptcy proceeding shall be instituted voluntarily by or involuntarily against any of the foregoing entities.

c. Paragraph (s) is deleted in its entirety and replaced with the following:

(s) **"Outside Entity"** means:

(i) any not-for-profit organization; or

(ii) any other organization listed as an **"Outside Entity"** by an endorsement to this policy.

d. Paragraph (dd) is amended such that subsections (i) and (ii) are deleted in their entirety and replaced with the following, with the remainder of the paragraph remaining unchanged:

(i) any organization of which, on or before the inception of the **Policy Period**, the Named Organization, either directly or indirectly through one or more of its **Subsidiaries**: (a) owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the directors, trustees or management committee members; or (b) has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the organization, to elect, appoint or designate a majority of the general partners of a partnership that is formed as a limited partnership, or elect, appoint or

designate a majority of the board of directors, trustees, management committee members or members of a management board of a limited liability corporation;

- (ii) automatically any not-for-profit organization which becomes a **Subsidiary** during the **Policy Period** and of which the book value of such entity's assets determined in accordance with Generally Accepted Accounting Principles ("GAAP") totals less than 35% of the similarly calculated assets of the **Named Organization** as of the inception date of the **Policy Period**; or

- 2. Clause **2. DEFINITIONS** is further amended by adding the following paragraph to the end thereof:

NF-SB (a) "**Cleanup Costs**" means expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, testing, neutralizing, detoxifying, or assessing the effects of **Pollutants**.

B. EXCLUSIONS AMENDED

- 1. Clause **4. EXCLUSIONS** is amended as follows:

- a. Paragraph (d) is deleted in its entirety and replaced with the following:

- (d) for **Bodily Injury** or **Property Damage**; provided, however, that this exclusion shall not apply:

- (1) with respect to the EPL Coverage Section only, for mental anguish or emotional distress arising from an **Employment Practices Violation** or **Non-Employment Discrimination**; or

- (2) with respect to the FLI Coverage Section only, to **Defense Costs** incurred in the defense of a **Claim** alleging a **Breach of Fiduciary Duty**;

- b. Paragraph (e) is deleted in its entirety and replaced with the following:

- (e) for: (i) the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, including, but not limited to, a **Claim** alleging damage to the **Organization** or its members; provided, however, that this exclusion shall not apply to **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**.

- 2. Clause **4. EXCLUSIONS** is further amended by adding the following paragraphs to the end thereof:

NF-SB (a) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly the hazardous properties of nuclear

material including, but not limited to, **Claims** for damages to an **Organization** or its shareholders or members with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the Organization or any Insured is, or had this policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into the United States of America, or any agency thereof, with any Insured or the Organization.

For purposes of (a) above, the below terms shall mean the following:

“Hazardous Properties” include radioactive, toxic or explosive;

“Nuclear Material” means Source Material, Special Nuclear Material or Byproduct Material;

“Source Material”, “Special Nuclear Material”, and “Byproduct Material” have the meanings given them in the Atomic Energy Act of 1954 or in law amendatory thereof;

“Spent Fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a Nuclear Reactor;

“Waste” means any Waste material (i) containing Byproduct Material and (ii) resulting from the operation by any person or Organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraph (a) or (b) thereof;

“Nuclear Facility” means:

- (i) any Nuclear Reactor,
- (ii) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing Spent Fuel, or (3) handling, processing or packaging Waste;
- (iii) any equipment or device used for the processing, fabricating or alloying of special Nuclear Material if at any time the total amount of such material in the custody of the Insured(s) at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
- (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; and

“Nuclear Reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

NF-SB (b) alleging, arising out of, based upon or attributable to:

- (i) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated; or
- (ii) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of the Organization or any members of their family or any entity with which they are affiliated; or
- (iii) political contributions, whether domestic or foreign.

C. LIMITS OF LIABILITY AMENDED

Clause 5. **LIMIT OF LIABILITY** is deleted in its entirety and replaced by the following:

5. LIMITS OF LIABILITY AND LIMITS OF INSURANCE

- (a) With respect to all **Coverage Sections**, other than the Crime Coverage Section, the following shall apply:

The respective Limit of Liability for each **Coverage Section** stated in Item 3 of the Declarations is the maximum limit of the Insurer's liability for all **Loss**, for all coverage for all **Claims** for which coverage is provided by such **Coverage Section**, except for the Additional Limit of Liability for Defense Costs stated in Item 3B of the Declarations (as amended by this endorsement).

The Limit of Liability stated as Additional Limit of Liability for Defense Costs for the D&O, EPL, and FLI Coverage Sections (if purchased) in Item 3B of the Declarations shall be an additional Limit of Liability for that part of **Loss** constituting **Defense Costs** incurred in connection with all **Claims** first made against the **Insured** during the **Policy Period** or the Discovery Period (if applicable) for all Claims for which coverage is provided by such **Coverage Section**. THE ADDITIONAL LIMIT OF LIABILITY FOR DEFENSE COSTS SHALL BE IN ADDITION TO AND NOT PART OF THE LIMIT OF LIABILITY STATED IN ITEM 3 OF THE DECLARATIONS FOR THE D&O, EPL, AND FLI **COVERAGE SECTIONS**. **Loss** constituting **Defense Costs** shall first reduce the Additional Limit of Liability for Defense Costs. Should the Additional Limit of Liability for Defense Costs become exhausted, then subsequent **Defense Costs** will reduce the other Limits of Liability as stated in Item 3 of the Declarations. In no event shall the Additional Limit of Liability for Defense Costs for the D&O, EPL, and FLI Claims stated in Item 3B of the Declarations, as the case may be, be

available once the Limit(s) of Liability set forth in Item 3 of the Declarations for such Claims has been completely exhausted.

If Separate Limits of Liability are stated in Item 3 of the Declarations, then each such Separate Limit of Liability shall be the maximum limit of the Insurer's liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Claim** type as stated on the Declarations.

If Shared Limits of Liability are stated in Item 3 of the Declarations, then each such Shared Limit of Liability shall be the maximum limit of the Insurer's liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all Claims for which such Shared Limit of Liability is applicable, as indicated on the Declarations.

The limit of the Insurer's liability for any amount identified in any policy section as a Sub-Limit of Liability shall be part of, and not in addition to, the Limits of Liability stated in the Declarations.

The Limit(s) of Liability for the **Discovery Period** shall be part of, and not in addition to, the applicable Limit(s) of Liability for the **Policy Period**. Further, any **Claim** which is made subsequent to the **Policy Period** or **Discovery Period** (if applicable) which pursuant to Clause 7 is considered made during the **Policy Period** or **Discovery Period** shall also be subject to the aggregate Limit(s) of Liability stated in the Declarations.

(b) Solely with respect to the Crime Coverage Section, the following shall apply:

The most the **Insurer** will pay for loss in any one **Occurrence**, as defined within the Crime Coverage Section, is the applicable **Per Occurrence Limit of Liability** shown in Item 5 of the Declarations.

D. NOTICE/CLAIM REPORTING PROVISIONS AMENDED

Clause 7. **NOTICE/CLAIM REPORTING PROVISIONS** is amended such that sub-paragraph (1)(a) thereof is deleted in its entirety and replaced with the following, with the remainder of Clause 7 to remain unchanged:

- (a) The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** or any **Crisis Management Event** (as defined in the **D&O Coverage Section**) as soon as practicable after the **Organization's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim**; or (ii) the **Crisis Management Event** commences, but in all events a **Claim** must be reported no later than either:
 - (1) anytime during the **Policy Period** or during the **Discovery Period** (if applicable); or

- (2) within ninety (90) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

III. AMENDMENTS TO THE D&O COVERAGE SECTION

The D&O Coverage Section is amended as follows:

A. DEFENSE PROVISIONS AMENDED

The **DEFENSE PROVISIONS** of Clause **1. INSURING AGREEMENTS** is deleted in its entirety and replaced with the following:

DEFENSE COSTS, SETTLEMENTS, JUDGMENTS

The **Insurer** shall have both the right and the duty to defend and appoint an attorney to defend any **Claim** alleging a **Wrongful Act**, even if such **Claim** or **Suit** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the Insurer in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this clause. However, the **Insurer** shall not be obligated to defend any **Claim** after the Limit(s) of Liability has been exhausted pursuant to Clause **5. LIMITS OF LIABILITY AND LIMITS OF INSURANCE** of the **General Terms and Conditions**. The **Insured(s)** shall give the Insurer full cooperation and such information as it may reasonably require.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the Insurer. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the Insurer shall be recoverable as **Loss** under the terms of this Policy. The Insurer's consent shall not be unreasonably withheld and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Loss** is not covered under the terms of this Policy.

If the **Insurer** recommends a settlement within this Policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the **Insureds** consent to such settlement, then the applicable Retention amount shall be retroactively reduced by ten percent (10%) for such **Loss**. It shall be a condition to such reduction that the **Insureds** must consent to such settlement within thirty (30) days of the date the **Insureds** are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the **Insureds** do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 3 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the **Insureds** do not consent to the first Settlement Opportunity within the time prescribed above, then, subject to the Policy Aggregate Limit of Liability and Separate Limit of Liability or Shared Limit of Liability, if any, the **Insurer's** liability for all Loss on account of such **Claim** shall not exceed (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount") plus (2) 70% of covered **Loss** in excess of such Settlement Opportunity Amount subject to this Policy's applicable Limit of Liability. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 3 of the Declarations.

Notwithstanding the foregoing, the **Insureds** shall be permitted to settle any **Claim** which settlement and all associated **Defense Costs** does not exceed the applicable Retention amount after applying the Settlement Opportunity rules set forth above (if applicable).

Where legally permissible, if the **Insurer** recommends a binding arbitration which is acceptable to the claimant and the **Insured** consents to submit to such arbitration, then the applicable Retention amount shall be reduced by ten percent (10%) but not more than \$2,500.

There shall be no requirement for the **Organization** to obtain prior written approval of the Insurer before incurring any **Crisis Management Loss**, provided that the **Crisis Management Firm** selected by the **Organization** to perform the **Crisis Management Services** has been approved by the **Insurer**.

B. DEFINITIONS AMENDED

1. Clause **2. DEFINITIONS**, Paragraph (g) is deleted in its entirety and replaced with the following:

(g) "**Individual Insured(s)**" means: (1) a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, committee member (of a duly constituted committee of the **Organization**), staff or faculty member (salaried or non-salaried), or the functional equivalent thereof of an **Organization**; (2) **Outside Entity Executive**; (3) an **Employee** of an **Organization**; (4) any appointed official of any tax exempt entity, commission or board which is listed as the Named Organization; or (5) any member of the board of managers of any Limited Liability Company, or of any General or Limited Partnership which is a **Subsidiary** or a covered **Affiliate** of the Named Organization. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this Policy.

2. Clause **2. DEFINITIONS**, Paragraph (i) is amended by adding the following subparagraphs to the end thereof:

Individual Insured Regulatory Legislation Fines and Penalties

Subject otherwise to the terms of this Policy, **Loss** shall also include the fines and penalties of **Individual Insureds** arising from any regulatory proceeding first commenced during the **Policy Period** or the **Discovery Period** (if applicable) alleging a violation of any **Regulatory Legislation** or the rules promulgated by the applicable **Governmental Entity** associated therewith in an amount not to exceed \$10,000 per **Individual Insured**.

The maximum limit of the **Insurer's** liability for all such fines and penalties combined arising from all regulatory proceedings alleging a violation of any **Regulatory Legislation** during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be a Sub-Limit of Liability in the amount of \$50,000.

3. Clause **2. DEFINITIONS** is amended by adding the following paragraphs to the end thereof:

NF-SB (a) "**Governmental Entity(ies)**" means any third party government entities possessing the legal authority to conduct a regulatory investigation.

NF-SB (b) "**Regulatory Legislation**" shall mean solely the following:

- (1) The Campus Sexual Assault Victims' Bill of Rights Act of 1991;
- (2) The Student Right to Know Act of 1991;
- (3) The Federal Education Rights and Privacy Act of 1974 ("FERPA" or the "Buckley Amendment");
- (4) The Crime Awareness and Campus Security Act of 1990 ("Clery Act");
- (5) The Uniform Student Freedom of Expression Act;
- (6) The Freedom of Information Act (5 U.S.C. 552) and any similar state law;
- (7) Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and
- (8) Any state "Open Public Meetings" or "Sunshine" law.

C. EXCLUSIONS AMENDED

Clause **3. EXCLUSIONS**, Paragraphs (a), (c), and (e) are deleted in their entirety and replaced with the following:

- (a) arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent act if any final adjudication establishes that such criminal or deliberate fraudulent act was committed

[The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of this exclusion.]

- (c) which is brought by or on behalf of the **Organization** against any **Individual Insured**; provided, however, this exclusion shall not apply to: (1) any derivative **Claim** made on behalf of the **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or the **Organization** or any **Affiliate** thereof; or (2) in any bankruptcy

proceeding by or against an **Organization**, to any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Organization**;

- (e) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to:
 - (i) to the extent that any liability does not arise from such express contract or agreement; or
 - (ii) **Loss** constituting **Defense Costs** of **Individual Insureds**;

D. PRE-AUTHORIZED DEFENSE ATTORNEYS DELETED

Clause 6. **PRE-AUTHORIZED DEFENSE ATTORNEYS** is deleted in its entirety.

IV. AMENDMENTS TO THE EPL COVERAGE SECTION

The EPL Coverage Section is amended as follows:

A. DEFINITIONS AMENDED

- 1. Clause 2. **DEFINITIONS**, Paragraphs (a) and (c) are deleted in their entirety and replaced by the following:
 - (a) **"Claim"** means:
 - (i) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations);
 - (ii) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (1) service of a complaint or similar pleading;
 - (2) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (3) receipt or filing of a notice of charges; or
 - (iii) an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") or Office of Federal Contract Compliance Program ("OFCCP"), or similar state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

However, in no event shall the term **"Claim"** include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- (c) **"Employment Practices Violation"** means any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
 - (2) harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise);
 - (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
 - (4) Retaliation;
 - (5) employment-related misrepresentation(s) to an **Employee** or applicant for employment with the **Organization**;
 - (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
 - (7) wrongful failure to employ or promote;
 - (8) wrongful deprivation of career opportunity with the **Organization**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
 - (9) wrongful discipline;
 - (10) failure to grant tenure or practice privileges;
 - (11) failure to provide or enforce adequate or consistent **Organization** policies or procedures relating to any **Employment Practices Violation**;
 - (12) with respect to any of the foregoing items (1) through (11) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights,

but only if the **Employment Practices Violation** relates to an **Individual Insured**, or applicant for employment with the **Organization** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

2. Paragraph (d) is deleted in its entirety and replaced with the following:

- (d) **Individual Insured(s)** means: (1) a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director,

department head, committee member (of a duly constituted committee of the **Organization**), staff or faculty member (salaried or non-salaried), or the functional equivalent thereof of an **Organization**; (2) **Outside Entity Executive**; (3) an **Employee** of an **Organization**; (4) any appointed official of any tax exempt entity, commission or board which is listed as the Named Organization; or (5) any member of the board of managers of any Limited Liability Company, or of any General or Limited Partnership which is a **Subsidiary** or a covered **Affiliate** of the Named Organization. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this Policy.

B. EXCLUSIONS AMENDED

Clause 3. **EXCLUSIONS**, Paragraph (b) is deleted in its entirety and replaced with the following:

- (b) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to (1) liability which would have attached in the absence of such express contract or agreement; or (2) **Loss** constituting **Defense Costs**;

C. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS) AMENDED

Clause 4. **DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)** is deleted in its entirety and replaced with the following:

4. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS

The **Insurer** shall have both the right and the duty to defend and appoint an attorney to defend any **Claim** alleging a **Wrongful Act**, even if such **Claim** or **Suit** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the Insurer in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this clause. However, the **Insurer** shall not be obligated to defend any **Claim** after the Limit(s) of Liability has been exhausted pursuant to Clause 5. **LIMITS OF LIABILITY AND LIMITS OF INSURANCE** of the General Terms and Conditions. The **Insured(s)** shall give the Insurer full cooperation and such information as it may reasonably require.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the Insurer. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the Insurer shall be recoverable as **Loss** under the terms of this Policy. The Insurer's consent shall not be unreasonably withheld and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Loss** is not covered under the terms of this Policy.

If the **Insurer** recommends a settlement within this Policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the **Insureds** consent to such settlement, then the applicable Retention amount shall be retroactively reduced by ten percent (10%) for such **Loss**. It shall be a condition to such reduction that the **Insureds** must consent to such settlement within thirty (30) days of the date the **Insureds** are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the **Insureds** do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 3 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the **Insureds** do not consent to the first Settlement Opportunity within the time prescribed above, then, subject to the Policy Aggregate Limit of Liability and Separate Limit of Liability or Shared Limit of Liability, if any, the **Insurer's** liability for all Loss on account of such **Claim** shall not exceed (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount") plus (2) 70% of covered **Loss** in excess of such Settlement Opportunity Amount subject to this Policy's applicable Limit of Liability. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 3 of the Declarations.

Notwithstanding the foregoing, the **Insureds** shall be permitted to settle any **Claim** which settlement and all associated **Defense Costs** does not exceed the applicable Retention amount after applying the Settlement Opportunity rules set forth above (if applicable).

Where legally permissible, if the **Insurer** recommends a binding arbitration which is acceptable to the claimant and the **Insured** consents to submit to such arbitration, then the applicable Retention amount shall be reduced by ten percent (10%) but not more than \$2,500.

D. PRE-AUTHORIZED DEFENSE ATTORNEYS DELETED

Clause 5. **PRE-AUTHORIZED DEFENSE ATTORNEYS** is deleted in its entirety.

V. AMENDMENTS TO THE FLI COVERAGE SECTION

In Clause 4. **EXCLUSIONS** of the FLI Coverage Section, paragraph (c) is deleted in its entirety and replaced with the following:

- (c) for failure to fund a **Plan** in accordance with **Employee Benefit Law** or the **Plan** instrument or the failure to collect contributions owed to the **Plan**; provided, however, this exclusion shall not apply to: (1) **Defense Costs**; or

(2) the portion of **Loss** that is payable as a personal obligation of an **Individual Insured**;

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

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AUTHORIZED REPRESENTATIVE

SPECIMEN