

DIVERSIFIED BUSINESS ORGANIZATION PROFESSIONAL INSURANCE

In consideration of the payment of the premium, in reliance on the statements in the **Proposal** and subject to all of the provisions of this Certificate, Underwriters and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

COVERAGE A: The Underwriters shall pay on behalf of the **Insured Persons Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Certificate Period** for a **Wrongful Act**.

COVERAGE B: The Underwriters shall pay on behalf of the **Insured Organization Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Certificate Period** for a **Wrongful Act**.

COVERAGE C: The Underwriters shall pay on behalf of the **Insured Organization Loss** resulting from any **Claim** first made against the **Insured Organization** during the **Certificate period** for a **Wrongful Act**.

COVERAGE D: Underwriters shall pay on behalf of the **Insured Organization** those **Costs, Charges, and Expenses** incurred by the **Insured Organization** in connection with an **SEC Investigation**, subject to the sublimit of liability identified in Item D. of the Declarations.

COVERAGE E: Underwriters shall pay on behalf of the **Insured Organization** those **Costs, Charges and Expenses** incurred by the **Insured Persons** resulting from any **Bump-up Claim**.

OPTIONAL COVERAGE

The following coverage is available only when the Declarations page of this Certificate reflects that such coverage have been purchased, and then subject to the terms and conditions for such additional coverage.

COVERAGE F: Underwriters shall pay on behalf of the **Insureds**, **Loss** resulting from any **Claim** first made during the **Certificate Period** for a **Wrongful Act** which such persons are legally obligated to pay arising from **Claims** against such persons for **Wrongful Employment Practices**.

II. DEFINITIONS

- A. **Benefits** means perquisites, fringe benefits, and payments in connection with an employee benefit plan and other payment, other than salary or wages, to or for the benefit of an employee arising out of the employment relationship.
- B. **Bump-up Claim** means any **Claim** alleging that any of the **Underwriters** paid or received inadequate consideration in connection with any merger or acquisition activity involving the **Insured Organization**.
- C. **Certificate Period** means the period from the effective date and hour of this Certificate

to the Certificate expiration date and hour, as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any, or the end of the **Optional Extension Period**, if purchased.

D. Change in Control means:

- (1) the acquisition by any person or entity of a controlling interest in the outstanding equity interest or securities controlling the right to manage the affairs of the **Insured Organization**;
- (2) the merger of the **Insured Organization** into another entity such that the **Insured Organization** is not the surviving entity;
- (3) the consolidation of the **Insured Organization** with another entity, or the acquisition of substantially all of the assets of the **Insured Organization** by another entity;
- (4) the liquidation or dissolution of the **Insured Organization**, or the appointment of a conservator, receiver or administrator to manage the affairs of the **Insured Organization**; or
- (5) the termination of the partnership or operating agreement for any **Insured Organization**, or the cessation of a general partner or manager listed in Endorsement No.1 to this Certificate acting as the general partner of any limited partnership or manager or any limited liability company.

E. Claim means:

- (1) any written demand for monetary damages or non-monetary relief against an **Insured** commenced by **Insured's** receipt of such demand;
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding (including any appeal therefrom) initiated against any of the **Insureds**, including any administrative or regulatory investigation commenced by a formal order of investigation; provided, however, that the foregoing shall not apply to any **SEC Investigation**.
- (3) criminal proceedings commenced by the return of an indictment;
- (4) any judicial or administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body with jurisdiction over **Wrongful Employment Practices** initiated against any of the **Insureds** for **Wrongful Employment Practices**;
- (5) a written agreement to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding;
- (6) a proceeding brought by the Securities and Exchange Commission pursuant to a formal order of investigation, or similar proceeding by a similar state agency, against the **Insured Organization** (referred to in this Certificate as an "**SEC Investigation**"), provided that coverage with respect to such **Claim** is limited to the amount set forth at Item D. of the Declarations, which shall be a part of, and not in addition to, the Certificate's Limit of Liability or
- (7) any **Bump-up Claim**.

- F. Continuity Date** means the date set forth in Item H. of the Declarations.
- G. Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses (including expert fees) and cost of attachment or similar bonds incurred by the **Insureds** in defense of any **Claim**, but shall not include:
- (1) directors' fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Insured Organization**, or the **Portfolio Company**, or
 - (2) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- H. Discrimination** means termination of the employment relationship, a demotion or failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment action including, but not limited to, retaliation because of race, color, religion, age, sex, sexual orientation, sexual preference, disability (including AIDS), pregnancy or national origin, or any other basis prohibited by federal, state or local law.
- I. Employees** means all persons who were, now are or shall be:
- (1) employees of the **Insured Organization**, and
 - (2) any individuals who are leased or are contracted to perform work for the **Insured Organization**, or are a independent contractors for the **Insured Organization**, but only if the **Insured Organization** provides indemnification to such individuals in the same manner as that provided to employees of the **Insured Organization**.
- J. Employee Benefit Plan** means any plan as defined by ERISA or any other benefit plan sponsored solely by the **Insured Organization** and solely for the benefit of the employees of the **Insured Organization**.
- K. Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that:
- (1) explicitly or implicitly are made a condition of employment;
 - (2) used as a basis for employment decisions; or
 - (3) create a work environment that interferes with performance.
- Harassment** includes allegations of assault and battery, but only if they are related to a charge of sexual harassment.
- L. Insureds** means the **Insured Organizations** and the **Insured Persons** and, with respect to Insuring Agreement Coverage F only: any **Employees**.
- M. Insured Organization** means:
- (1) the entity listed in Item A. of the Declarations of this Certificate;
 - (2) those entities listed in Endorsement No. 1 to this Certificate; and

(3) any **Subsidiary** thereof.

N. Insured Persons means any:

- (1) natural person who was, is, or shall become a duly appointed or elected director, officer, general partner, manager, or equivalent executive of an **Insured Organization**. For purposes of Insuring Agreement Coverage F only (Employment Practices Liability Coverage), if purchased, the term **Insured Persons** also shall include employees of the **Insured Organization**;
- (2) natural persons serving on management committees, advisory boards, and similar committees formed pursuant to the **Insured Organization's** articles of incorporation, by-laws, operating agreement, partnership agreement or similar document; and
- (3) the functional equivalent to the positions identified in (1) above, in the event the **Insured Organization** is incorporated or domiciled outside the United States.

O. Interrelated Wrongful Acts means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

P. Loss means damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Insured Persons** under Insuring Clauses A. or B., and the **Insured Organization** under Insuring Clause C., including punitive damages where insurable, but shall not include:

- (1) that portion of any multiplied damages awarded which exceeds the amount multiplied,
- (2) taxes, criminal or civil fines or penalties imposed by law,
- (3) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed,
- (4) with respect to Insuring Clause D, **Costs, Charges and Expenses** incurred by any of the **Insureds** up to but not exceeding the Sublimit of Liability identified in Item D. of the Declarations relating to this Coverage Section, or
- (5) with respect to Insuring Clause F, only **Loss** means damages, settlements, including front pay and back pay, and **Costs, Charges and Expenses** incurred by any of the **Insureds**, but shall not include:
 - (a) taxes, criminal or civil fines or penalties imposed by law, or
 - (b) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed.

Q. Negligent Hiring means an allegation by a claimant that an **Insured** is liable for **Discrimination** or **Harassment** because of negligence in the hiring of any employee.

R. Optional Extension Period means the period described in Clause XI. A. of this Certificate.

S. Outside Entity means:

- (1) any non-profit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (as amended), and
- (2) any for-profit organization specifically identified by endorsement to this Certificate.

T. Proposal means:

- (1) the proposal for this Certificate or any Certificate or Policy of which this Certificate is a renewal or replacement, and
- (2) any materials submitted therewith, which shall be retained on file by Underwriters and be deemed attached hereto, as if physically attached hereto.

U. Retaliation means any actual or alleged response of any of the **Insureds** to:

- (1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Insureds** where such act is alleged to be a violation of any federal, state local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder, or
- (2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights, or
- (3) the filing of any claim under the federal False Claims Act or any other federal, state, local or foreign "whistleblower" law, or
- (4) any **Employee** work stoppage or slowdown.

V. SEC Investigation means an investigation commenced by the U.S. Securities and Exchange Commission pursuant to a formal order of investigation.

W. Subsidiary means any organization:

- (1) which at the inception date of this Certificate is named in the **Proposal**; and
- (2) in which more than fifty percent (50%) of the voting stock or other equity interest is owned by any **Insured Organization**, either directly or through one or more of its **Subsidiaries**.

X. Takeover means:

- (1) the acquisition by any person or entity of more than 50% of the outstanding equity interest of the **Named Insured**, or
- (2) the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.

Y. Wrongful Act means, as alleged in any **Claim**, any actual or alleged act, misstatement, error, omission, misleading statement, neglect, breach of duty or act by:

- (1) any of the **Insured Persons**, while acting in their capacity as:
 - (a) such on behalf of the **Insured Organization** or the functional equivalent of such on behalf of the **Insured Organization** in the event the **Insured Organization** is incorporated or domiciled outside the United States; and
 - (b) a manager, director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Insured Organization**; and
- (2) with respect to Insuring Clauses B , C and D of this Coverage Section only, the **Insured Organization**.

Z. Wrongful Employment Practices means any actual or alleged:

- (1) **Discrimination**;
- (2) **Harassment**;
- (3) termination, actual or constructive, of an employment relationship in any manner which is allegedly against the law and wrongful;
- (4) allegations of wrongful demotion, retaliation, misrepresentation, promissory estoppel and intentional interference with contract, which arise from an employment relationship;
- (5) libel, slander, defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy and other personal injury allegations which arise from the employment relationship;
- (6) allegations of breach of an implied employment contract and breach of the covenant of good faith and fair dealing in the employment contract;
- (7) employment terminations, disciplinary actions, demotions or other employment decisions which violate public Certificate or the Family Medical Leave Act or similar state law;
- (8) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (9) violation of any federal, state or local law concerning employment or discrimination in employment, including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title V11 of the Civil Rights law of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Fifth and Fourteenth Amendments to the United States Constitution, all as amended, or any rule or regulation promulgated thereunder,

- (10) allegations of retaliation against an **Insured** including, but not limited to, retaliation for filing claims under the Federal False Claims Act, retaliation in connection with whistleblowing, retaliation for union activities or in connection with strikes or lockouts;
- (11) allegations of wrongful deprivation of career opportunity or failure to grant tenure;
- (12) **Negligent Hiring** and
- (13) **Retaliation.**

III. EXTENSIONS

A. Estate and Representatives Extension

Subject otherwise to the terms hereof, this Certificate shall cover **Loss** arising from a **Claim** made against the estates, heirs, or legal representatives of a deceased **Insured Person**, and the legal representatives of any **Insured Person** in the event of incompetency, insolvency or bankruptcy, who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claim** is based were committed.

B. Spousal Extension

Subject otherwise to the terms hereof, this Certificate shall cover **Loss** arising from a **Claim** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held or transferred from the **Insured Person** to the spouse.

C. Non-Profit Outside Position Liability Extension

Subject to all of its terms and conditions, this Certificate covers any **Insured Person** serving in an **Outside Position**, but such coverage shall be specifically excess of any indemnity or insurance available from or provided by the entity in which the **Insured Person** serves in such **Outside Position**.

“**Outside Position**” means the position of director, manager, officer, trustee, or other equivalent executive position held by an **Insured Person** in:

- (1) any **Non-Profit Entity**, or
- (2) any entity other than a **Non-Profit Entity** or a **Portfolio Company**, provided such coverage is specifically granted by endorsement to this Certificate,

if such position is with the knowledge and consent or at the request of the **Insured Organization**.

“**Non-Profit Entity**” means any non-profit corporation, community chest, fund or foundation that (i) is not included in the definition of the **Insured Organization**, and (ii) is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

IV. EXCLUSIONS

Underwriters shall not be liable to make any payment in connection with any **Claim**:

- A. for bodily injury, sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of the use thereof), and, except to the extent a **Claim** is made for **Wrongful Employment Practices**, assault, battery, invasion of privacy, emotional distress, libel, slander or defamation;
- B. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Certificate Period** under any other similar insurance Certificate, or
 - (2) any other **Wrongful Act**, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- C. for an accounting of profits made from the purchase or sale by such **Insured Persons** of securities of the **Insured Organization** within the meaning of Section 16(b) of the 1934 Securities Exchange Act and amendments thereto or similar provisions of any federal, state, local or common law;
- D. solely with respect to Insuring Agreement Coverage F, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged obligation of any of the **Insureds** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or similar law; provided, however, this exclusion shall not apply to any such **Claim** for **Retaliation**;
- E. brought about or contributed to by any dishonest, fraudulent or criminal act or omission committed with the intent to deceive, or any personal profit or advantage gained by any of the **Insureds** to which they were not legally entitled, if such dishonest, fraudulent or criminal act or personal profit or advantage is established by judgment or other final adjudication adverse to the **Insureds**;
- F. against any **Subsidiary** or any of the **Insured Persons** of a **Subsidiary** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
 - (2) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- G. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal,

state or local statutory or common law; provided, however, this exclusion does not apply to any such **Claim** alleging violations of the Equal Pay Act, or for **Retaliation**;

- H. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- I. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
- (1) is brought by a security holder of the **Insured Organization** who, when such **Claim** is first made, is acting independently of all of the **Insureds**,
 - (2) is brought by any of the **Insureds** in the form of a cross-claim, third party claim or other proceeding for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Certificate, or
 - (3) is brought by one or more of the **Insured Persons** alleging **Wrongful Employment Practices** in connection with the employment of such **Insured Person** with the **Insured Organization**;
- J. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving actual or alleged seepage, pollution or contamination of any kind; provided, however, this exclusion shall not apply to any **Claim** brought directly, derivatively or otherwise by one or more securities holders of the **Insured Organization**;
- K. for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization** or **Outside Entity**, which payment without such previous approval shall be held by a court to be in violation of law;
- L. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the service of any of the **Insured Persons** in any position or capacity in any entity other than the **Insured Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
- (1) such **Claim** is based on the service of any of the **Insured Persons** as a manager, director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Insured Organization**, and
 - (2) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Insured Persons**, and
 - (3) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** Underwriters;
- M. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any prior and/or pending litigation as of the **Continuity Date**, or
 - (2) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, regardless of the legal theory upon which such **Claim** is predicated;
- N. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** which any of the **Underwriters** had knowledge of prior to the **Continuity**

Date where such **Underwriters** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;

- O. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any initial public offering undertaken by the **Insured Organization** after the inception date of this Certificate, including all activities in connection therewith and the purchase or sale of such securities subsequent to such initial public offering; provided, however, that this exclusion shall not apply to the private placement of the **Insured Organization's** securities if such securities are sold directly to a limited number of investors and are exempted from the registration requirements of the Securities Act of 1933;

The Underwriters shall not be liable to make any payment in connection with any **Claim** made against the **Insured Organization** under Insuring Clause C:

- P. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, liability of others assumed by the **Insured Organization** under any contract or agreement, either oral or written, except and to the extent the **Insured Organization** would have been liable in the absence of such contract or agreement, or
- Q. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trade marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or
 - (2) the use or performance of any goods or products, manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Insured Organization**
 - (3) acts subsequent to takeover

The Underwriters shall not be liable to make any payment under Coverage Section F, other than **Costs, Charges and Expenses**, in connection with any **Claim**:

- R. which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided, however, this exclusion shall not apply to any such **Claim** for actual or alleged wrongful dismissal, discharge, or termination of employment;
- T. which is based upon, arises out of, directly or indirectly results from, or is in consequence of the employment reinstatement of the claimant by the **Insured Organization** or the continued employment of the claimant; or
- U. which constitutes front pay, future damages or other future economic relief or its equivalent, if the **Insured Organization** has the option, pursuant to a judgment or other final adjudication, but fails to reinstate the claimant as an **Employee**.

No **Wrongful Act** of one or more **Underwriters** shall be imputed to any other **Underwriters** for the purpose of determining the applicability of the above Exclusions.

V. LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM

- A. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item F. of the Declarations in excess of the amount of the individual Retentions set forth in Item D. of the Declarations for Insuring Agreement Coverages A, B, C, D, E and F up to the Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.
- B. In the event a single **Claim** is covered in part under more than one of the Retentions set forth in Item D. of the Declarations, each applicable Retention shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Agreement. The sum of the total Retentions as finally applied shall constitute the Retention applicable to such **Claim**. The total Retentions as finally determined shall in no event exceed the largest single Retention.
- C. Underwriters' maximum liability under the Certificate, whether covered under one or more Insuring Agreements, shall be the Limit of Liability shown in Item C. of the Declarations of this Certificate.
- D. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - (1) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - (2) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VIII.B.
- E. Payments of **Loss** by Underwriters, including **Costs, Charges and Expenses**, shall reduce the Limit of Liability.
- F. Underwriters shall pay **Costs, Charges and Expenses** no more than once every ninety days.
- G. The Retentions applicable to Insuring Agreement Coverages B and C shall apply to **Loss** covered by such Insuring Agreement if indemnification by the **Insured Organization** or **Portfolio Company** is required by law or legally permissible to the fullest extent permitted by law, regardless whether actual indemnification is made, unless the **Insured Organization** is unable to make such actual indemnification by reason of its insolvency.

VI. SETTLEMENTS AND DEFENSE

- A. As a condition precedent to coverage, no settlement negotiations or settlement Agreements shall occur and no **Costs, Charges and Expenses** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld.
- B. Underwriters shall have the right to associate themselves in the defense and settlement of any **Claim** that appears reasonably likely to involve this Certificate. Underwriters may make any investigation they deem appropriate. However, it shall be the duty of the **Insureds**, and not the duty of Underwriters, to defend **Claims**.

VII. ALLOCATION

If both **Loss** covered under this Certificate and **Loss** not covered by this Certificate are incurred in connection with any **Claim**, the **Insured Person(s)**, the **Insured Organization** and Underwriters shall use all reasonable efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**.

If there can be an agreement on **Costs, Charges and Expenses**, Underwriters shall advance on a current basis **Costs, Charges and Expenses** allocated to covered **Loss**. If there can be no agreement on an allocation of **Loss**:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- B. Underwriters shall advance on a current basis **Costs, Charges and Expenses** which Underwriters believes to be covered under the Certificate until a different allocation is negotiated, arbitrated or judicially determined; and
- C. Underwriters, if requested by the **Insured Person(s)** or the **Insured Organization**, shall submit such dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Person(s)** or the **Insured Organization**, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Costs, Charges and Expenses** on account of a **Claim** shall be applied retroactively to all **Costs, Charges and Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Costs, Charges and Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

VIII. NOTIFICATION

- A. The **Insureds** shall, as a condition precedent to their rights to payment under this Certificate, give to Underwriters notice in writing of any **Claim** as soon as practicable but in no event later than 60 days after the end of the **Certificate Period**.
- B. If, during the **Certificate Period**, the **Insureds** first become aware of a specific **Wrongful Act**, and if the **Insureds** during the **Certificate Period** give written notice to Underwriters of: (1) the specific **Wrongful Act**; (2) the consequences which have resulted or may result therefrom; and (3) the circumstances by which the **Insureds** first became aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Certificate to have been made at the time such notice was first given.
- C. Notice to Underwriters provided for in Clause VIII. shall be given in writing to the firm identified in Item J. of the Declarations.

IX. OTHER INSURANCE

If any **Loss** arising from any **Claim** is insured by another valid Certificate or policies, then this Certificate shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other Certificate or policies, whether such other Certificate or policies are stated to be primary, contributory, excess,

contingent or otherwise, unless such other insurance is written specifically excess of this Certificate by reference in such other Certificate or policy to the Certificate Number indicated on this Certificate's Declarations page.

X. GENERAL CONDITIONS

A. Warranty Clause

It is warranted that the particulars and statements contained in the **Proposal** are the basis of this Certificate and are to be considered as incorporated into and constituting a part of this Certificate.

By acceptance of this Certificate, the **Insureds** agree that:

- (1) the statements in the **Proposal** are their representations, that they shall be deemed material to the acceptance of the risk or the hazard assumed by Underwriters under this Certificate and that this Certificate is issued in reliance upon the truth of such representations;
- (2) in the event the **Proposal** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Certificate, this Certificate in its entirety shall be void and of no effect whatsoever with respect only to those **Insured Persons** who had knowledge of any such misrepresentation; and
- (3) except as provided in Clause X.A. (2) above, this Certificate shall be deemed a single unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each of the **Insureds**.

B. Coverage for Acquisitions, Mergers and Consolidations

This Certificate is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Proposal**. In the event the **Insured Organization**: (1) acquires any other entity or acquires substantially all of the assets of another entity; or (2) merges with or is consolidated with another entity such that the **Insured Organization** is the surviving entity, coverage shall be afforded for **Loss** arising from **Wrongful Acts** attributable to and occurring subsequent to such acquisition, merger or consolidation for 90 days from the effective date of such acquisition, merger or acquisition. After 90 days, coverage under this Certificate shall only be provided to the **Insureds** if:

- (1) written notice of such transaction or event was given to Underwriters by the **Insured Organization**, and
- (2) the **Insured Organization** provides Underwriters with such information in connection therewith as Underwriters deem necessary, and
- (3) the **Insureds** accept any special terms, conditions, exclusions or additional premium charge required by Underwriters.

C. Cancellation and Termination of Coverage

- (1) By acceptance of this Certificate, the **Insureds** hereby confer the exclusive power and authority to cancel this Certificate on their behalf to the entity identified in Item A. of the Declarations of this Certificate. Such entity may cancel this Certificate by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Certificate Period**. Delivery of such written notice shall be equivalent to mailing.
- (2) Underwriters may cancel this Certificate only for nonpayment of premium by mailing to the entity identified in Item A. of the Declarations of this Certificate written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Certificate Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
- (3) If this Certificate is cancelled pursuant to (1) hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Certificate is cancelled pursuant to (2). hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
- (4) In the event of a **Change in Control** after the inception date of this Certificate, the coverage provided by this Certificate, subject to its terms, shall apply to any of the **Insureds** with respect to **Claims** made during the **Certificate Period** only for **Wrongful Acts** committed or allegedly committed prior to such **Change in Control**.

D. **Insured Organization** Authorization Clause

By acceptance of this Certificate, the **Insureds** agree that the entity identified in Item A. of the Declarations will act on their behalf with respect to the giving of all notices to Underwriters, the receiving of notices from Underwriters, the payment of the premium and the receipt of any return premium.

E. Territory

This Certificate extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XI. **OPTIONAL EXTENSION PERIOD**

- A. If this Certificate is not renewed by the **Insured Organization** or by Underwriters, then the **Insured Organization** shall have the right, upon payment of an additional premium calculated at the percentage(s) shown in Item G. (1) of the Declarations of the total annual premium for this Certificate, to an extension of the coverage granted by this Certificate with respect to any **Claim** first made during the period of time set forth in Item G. (2) of the Declarations after the effective date of such cancellation or,

in the event of such refusal to renew, after the Certificate expiration date, but only with respect to any **Wrongful Act** committed before such date.

- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Certificate must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within 30 days prior to the end of the **Certificate Period** or, in the event of a refusal to renew, within 30 days after the Certificate expiration date. If such notice and premium payment is not timely given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium therefore shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit of Liability of Underwriters.

XII. RUN-OFF COVERAGE

In the event of a **Takeover**:

- A. The **Named Insured** shall have the right, upon payment of an additional premium in an amount to be negotiated between the Underwriters and the **Named Insured**, to an extension of the coverage granted by this Certificate with respect to any **Claim** first made during the period of time agreed upon by the Underwriters and the **Named Insured** following the effective date of the **Takeover**, but only with respect to any **Wrongful Act** committed before such date.
- B. If this extension of coverage is elected and purchased then:
 - (1) Clause X. C., above, is deleted in its entirety, and
 - (2) Clause XI., above, is deleted in its entirety, and

the maximum aggregate **Limit of Liability** of the Underwriters under this Certificate for any and all **Claims** made during the **Certificate Period** and the period of this extension of coverage shall be the amount shown in Item C. of the Declarations for this Certificate.

XIII. ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES

- A. As a condition precedent to coverage, the **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request in connection with the defense, negotiation and settlement of any **Claim**, and the **Insureds** further agree that they shall not take any action which in any way increases Underwriters' exposure under this Certificate.
- B. In the event of any payments under this Certificate, Underwriters shall be subrogated to the **Insureds'** rights of recovery therefore against any person or entity. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution

of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

XIV. ASSIGNMENTS AND ACTION AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Certificate, nor until the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**. Assignment of interest under this Certificate shall not bind Underwriters unless its consent is endorsed hereon.

XV. ENTIRE AGREEMENT

By acceptance of this Certificate, the **Insureds** agree that this Certificate embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Certificate or estop Underwriters from asserting any right under the terms of this Certificate, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Certificate.

XVI. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of the **Insureds**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State in the United States. It is further agreed that services of process in such suit may be made upon Duane, Morris & Heckscher, LLP, 555 Pleasantville Road, North Building, Suite 200, Briarcliff, New York 10510, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or such individual's successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.