



MISCELLANEOUS PROFESSIONAL SERVICES
Effected with certain Lloyd's Underwriters
(hereinafter called the "Underwriters") through
XN FINANCIAL SERVICES INC.
BOCA RATON, FLORIDA

Attaching to and forming part of Certificate Number:

**MISCELLANEOUS PROFESSIONAL SERVICES
COVERAGE SECTION**

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

A. **INSURING CLAUSE**

1. **Miscellaneous Professional Services**

Underwriters shall pay on behalf of the **Assureds** all **Loss** that the **Assureds** shall become legally obligated to pay as the result of any **Claim** for a **Wrongful Act** first made against any of the **Assureds** during the **Certificate Period** and reported to Underwriters pursuant to Section E. of this Coverage Section.

B. **DEFINITIONS**

The following terms, whenever used in this Coverage Section in boldface type, shall have the meaning indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B. of the General Terms and Conditions section of this Certificate.

1. **Assureds** means:

- a) **the Assured Organization,**
- b) any **Subsidiary** that becomes owned after the inception date of this Certificate provided such entity's annual gross revenue does not exceed 20% of the **Assured Organization's** annual gross revenue at the inception date of this Certificate,
- c) any **Subsidiary** that becomes owned after the inception date of this Certificate and whose most recent annual gross revenue exceeds 20% of the **Assured Organization's** annual gross revenue at the inception date of this Certificate, but only for a period of 90 days after the acquisition or formation of such **Subsidiary** and provided written notice of the acquisition or formation is provided to Underwriters within 90 days after the acquisition or formation of such **Subsidiary**. Following such notice to Underwriters, such entity will only be considered a **Subsidiary** if, at Underwriters' sole discretion, Underwriters agree in writing to extend the coverage of the Certificate to such entity, and if the

Assureds provide Underwriters with any additional information Underwriters may request; and Underwriters agree to the terms, conditions, exclusions or additional premium charge as may be required by Underwriters,

- d) all persons who were, now are, or shall become partners, officers, directors, managers, member managers, or employees of the **Assured Organization**, and in the event of the death, incapacity or bankruptcy of a partner, officer, director, manager, member manager, or employee, any **Claim** against their estate, heirs, legal representatives or assigns for a **Wrongful Act** of such partner, officer, director, manager, member manager, or employee,
- e) any person, to the extent such person was acting as an independent contractor for the **Assured Organization**, but only as respects such person's work or services for or on behalf of the **Assured Organization** and provided the **Assured Organization** had agreed to indemnify such person as an independent contractor prior to the time a covered **Claim** was first made against such person, and
- f) any other individual person or entity specifically identified by endorsement to this Certificate.

2. **Claim** means:

- a) any written demand for damages or other relief against any of the **Assureds**, or
- b) any arbitration or civil judicial proceeding against any of the **Assureds** in which any of the **Assureds** may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom.

3. **Cost, Charges and Expenses** mean reasonable and necessary legal fees and expenses incurred by any of the **Assureds** in defense of any covered **Claim** and the cost of attachment or similar bonds, but shall not include:

- a) salaries, wages, overhead or benefit expenses associated with partners, officers, directors, managers, member managers, or employees of the **Assured Organization**, or
- b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

4. **Interrelated Wrongful Acts** mean **Wrongful Acts** that have as a common nexus, any fact, circumstance, situation, event, transaction or series of similar facts, circumstances, situations, events or transactions.

5. **Loss** means damages, judgments, pre- and post- judgment interest, settlements and **Costs, Charges and Expenses** incurred by the **Assureds**, but shall not include:

-
- a) punitive or exemplary damages or that portion of any award of multiplied damages which exceeds the amount multiplied; except to the extent such damages are insurable under the law pursuant to which this Certificate shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Assureds** in deciding the insurability of such damages, or
 - b) taxes, criminal or civil fines or penalties imposed by law; or
 - c) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed; or
 - d) fees or the return or offset of fees, deposits, commissions or charges for goods and services; or
 - e) costs of correcting, re-performing or completing any **Professional Services**; or
 - f) royalties or profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive or equitable relief; or
 - g) any amount for which the **Assureds** are not financially liable or legally obligated to pay.
6. **Professional Services** means those services performed by the **Assureds** for others for a fee or other consideration pursuant to a contract, and is limited to those services described by Endorsement to this Certificate.
7. **Retroactive Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
8. **Trade Secret** means information, including a formula, pattern, compilation, program, device, method, technique or process that:
- a) derives independent economic value, actual or potential, from not being generally known to, or readily ascertainable by, another person or entity who would obtain value from its disclosure for use, so long as reasonable efforts have been made to maintain its secrecy; and
 - b) a business uses, which gives it an opportunity to obtain an advantage over competitors who do not know or use it.
9. **Wrongful Act** means the following, when occurring solely in connection with the **Assureds'** actual or alleged rendering of, or failure to render, **Professional Services**:
- a) any actual or alleged error, misstatement, misleading statement, omission or neglect or breach of duty;

- b) any actual or alleged oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- c) any actual or alleged false arrest, detention or imprisonment;
- d) any actual or alleged wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;
- e) any actual or alleged malicious prosecution;
- f) misappropriation of name or likeness.

C. EXCLUSIONS

Underwriters shall not be liable to pay **Loss** under this Coverage Section, and shall not be obligated to provide a defense, in connection with any **Claim**:

1. based upon or arising out of fraudulent, dishonest, criminal, intentional, willful or malicious acts by the **Assureds** as determined by a final judgment or other final adjudication;
2. based upon or arising out of any personal profit by any of the **Assureds** to which they were not legally entitled as determined by a final judgment or other final adjudication;
3. for actual or alleged:
 - a) bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or loss of consortium; or
 - b) loss of, damage to, or destruction of any tangible property or securities, including loss of use thereof; or
 - c) assault or battery;
4. based upon, arising out of, directly or indirectly resulting from or in consequence of, in whole or in part, or involving in any manner any actual or alleged seepage, pollution or contamination of any kind or the clean up, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any seepage, pollution or contamination of any kind;
5. brought by or on behalf of any of the **Assureds** or the **Assureds'** successors or assigns; provided, however, this exclusion shall not apply to any **Claim** by or on behalf of any natural person or entity that is an **Assured** by reason of an Endorsement to this policy;
6. brought by or on behalf of any natural person or entity:
 - a) which is owned, operated, or controlled by any of the **Assureds**;

- b) which owns, operates, or controls any of the **Assureds**;
- c) in which any of the **Assureds** is a director, officer, partner, principal stockholder, or employee;

provided, however, this exclusion shall not apply to any **Claim** by or on behalf of any natural person or entity that is an **Assured** by reason of an Endorsement to this policy;

7. that is insured under any other valid and collectible policy or policies, except in respect of any excess beyond the amounts of the limits of liability of such other policy or policies where such **Claim** is otherwise covered by this Certificate;
8. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any **Wrongful Act** or **Interrelated Wrongful Act**, or out of any fact, circumstance or situation;
 - a) that has been the subject of any notice given prior to the **Certificate Period** under any other insurance policy, or
 - b) if prior to the commencement of this Certificate, any of the **Assureds** knew or should have known that such **Wrongful Act**, **Interrelated Wrongful Act**, fact, circumstances or situation might give rise to a **Claim**;
9. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part;
 - a) any prior and/or pending litigation that any of the **Assureds** had knowledge of prior to the commencement of this Certificate, or
 - b) any fact, circumstance, situation, transaction or event, or series of similar facts, circumstances, situations, events or transactions, underlying or alleged in such litigation,regardless of the legal theory upon which such **Claim** is based;
10. to the extent such **Claim** is for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory law or common law;
11. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, plagiarism, piracy, misappropriation of ideas, failure to attribute authorship or provide credits, infringement of any copyright, trademark, service mark, trade name, trade dress, title, slogan, **Trade Secret**, or patent;
12. for that portion of **Loss** which is covered under any other Coverage Section of this Certificate;

13. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any **Wrongful Act**, or any continuous, repeated or **Interrelated Wrongful Acts** where the first such **Wrongful Act** was committed or is alleged to have been committed prior to the **Retroactive Date** shown in Item C. of the Declarations;
14. against any **Subsidiary** or any individuals of said **Subsidiary**, including but not limited to, partners, officers, directors, managers, member managers, or employees relating to:
 - a) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such **Subsidiary** ceased to be a **Subsidiary**; or
 - b) any **Wrongful Act** occurring while such **Subsidiary** was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.
15. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
16. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any employment relationship or employment-related matters brought by or on behalf of any partners, officers, directors, managers, member managers, or employees, including any voluntary, seasonal, temporary, leased or independent contracted employee of the **Assured Organization**;
17. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, the Securities Act of 1933, the Securities Exchange Act of 1934, Investment Advisors Act of 1940, any state securities law, any other similar federal, state, local or common law, any rules or regulations promulgated thereunder, or amendments thereto;
18. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, the insolvency or bankruptcy of any **Assured** or any enterprise in which any **Assured** owns an interest;
19. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any breach of any implied or express warranties, guarantees or contracts, either oral or written; provided, however, with respect to allegations of breach of an express written contract this exclusion shall not apply to any liability that would have attached in the absence of such contract;
20. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws, or false, misleading, fraudulent, or deceptive advertising;
21. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any harassment, misconduct, or discrimination because of or relating to race, creed, color, age, sex, sexual preference, national origin, religion, handicap, disability, or marital status;

22. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
23. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any actual or alleged act or breach of duty by any director or officer in the discharge of their duty;
24. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of an **Assured's** cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;
25. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibers or dust;
26. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, any action brought by or on behalf of the Federal Trade Commission (FTC), Federal Communications Commission (FCC) or any other federal, state or local government agency;
27. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, in whole or in part, the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property;
28. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving in whole or in part, any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Assureds**;

For the purpose of determining the applicability of the Exclusions, no **Wrongful Act** of an **Assured** who is a natural person shall be imputed to any other **Assured** who is a natural person, although **Wrongful Acts** of an **Assured** who is a natural person may be imputed to the **Assured Organization**.

D. LIMIT OF LIABILITY AND RETENTIONS

1. Underwriters shall pay **Loss** for each covered **Claim** relating to this Coverage Section in excess of the amount of Retention and up to the Limit of Liability set forth in Item C. of the Declarations, it being warranted that the remaining portion of **Loss** shall be uninsured.
2. The amount shown in Item C. of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of Underwriters under this Coverage Section regardless of the number of Claims, claimants, suits, allegations, **Assureds**, or **Wrongful Acts**.
3. 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 first made at the earliest of the following times:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - b) 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 E.2., below.
4. Payments of **Loss** by Underwriters, including **Costs, Charges and Expenses**, shall reduce the Limit of Liability under this Coverage Section.
5. Underwriters shall pay **Costs, Charges and Expenses** no more than once every 90 days.

E. NOTIFICATION

1. As an express condition precedent to their rights to coverage, the **Assureds** shall provide Underwriters with written notice of each and every **Claim**, such notice to be provided as soon as practicable and during the Certificate Period, but in no event later than sixty (60) days after the expiration of the **Certificate Period**.
2. A **Claim** shall be deemed made when any of the **Assureds** first receives written notice of such **Claim**.
3. If, during the **Certificate Period**, any of the **Assureds** first becomes aware of a specific **Wrongful Act** and if the **Assureds**, during the **Certificate Period**, give written notice to Underwriters as soon as practicable of:
 - a) the specific **Wrongful Act**, and
 - b) the consequences which have resulted or may result therefrom, and
 - c) the circumstances by which the **Assureds** first become aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed to have been made at the time such notice was first given to Underwriters.

4. Notice to Underwriters shall be given to the firm shown under Item G. of the Declarations for this Certificate.

F. GENERAL PROVISIONS

Clause I., Run-Off Coverage, of the General Terms and Conditions Section does not apply to this Coverage Section.