

UNDERWRITERS AT LLOYDS, LONDON  
PROFESSIONAL SERVICES ERRORS AND OMISSIONS  
INSURANCE CERTIFICATE

NOTICE

Subject to all the terms, conditions, exclusions and limitations contained in this Certificate and any endorsements thereto, and the application submitted therefore, coverage is provided herein only for those CLAIMS first made against the ASSURED during the CERTIFICATE PERIOD for a WRONGFUL ACT in rendering or failing to render PROFESSIONAL SERVICES.

Please review this Certificate carefully with your insurance agent, broker or representative. This Certificate does not contain any duty or obligation by the Underwriters to defend any ASSURED or the NAMED ASSURED and is strictly one of indemnity.

INSURING AGREEMENTS

In consideration of the payment of the premium, the undertaking of the ASSURED to pay the deductible as described herein, and in reliance upon the statements and representations in the application that is made a part hereof and attached hereto (including other materials referred to in the application but which are not attached), and subject to all the terms and conditions of this Certificate, the Underwriters agree with the ASSURED as follows:

I. COVERAGE – PROFESSIONAL INDEMNITY

To indemnify the ASSURED for those sums:

- (a) which the ASSURED shall become legally obligated to pay as DAMAGES by reason of a CLAIM for DAMAGES first made against the ASSURED during the CERTIFICATE PERIOD by third parties to whom PROFESSIONAL SERVICES were rendered resulting directly from a WRONGFUL ACT on the part of the ASSURED in rendering or failing to render PROFESSIONAL SERVICES
- (b) CLAIMS EXPENSE actually paid by the ASSURED.

II. DEFENSE PROVISIONS – NO DUTY

The ASSURED shall defend any CLAIM made against the ASSURED. The ASSURED may select counsel to defend any CLAIM, subject to the Underwriters' consent which shall not be unreasonably withheld. The Underwriters shall have no duty to defend or to indemnify the ASSURED in respect of CLAIMS EXPENSE until the conclusion of the defense or appeal of any CLAIM. Notwithstanding the foregoing, the Underwriters, in their sole discretion, shall have the right, but not the duty, to take over the defense of any CLAIM made against the ASSURED. In either event, CLAIMS EXPENSE paid by the Underwriters shall reduce the remaining Limit of Liability.

III. LIMIT OF LIABILITY

The total liability of the Underwriters for DAMAGES and CLAIMS EXPENSE, separately or in combination, with respect to all CLAIMS first made against the ASSURED during the CERTIFICATE PERIOD, regardless of number, shall not exceed the amount of the Limit of Liability stated in Item 3 of the Declarations. The Limit of Liability shall not be increased in any way by the purchase of the Extended Reporting Period pursuant to Condition XIV. Neither the inclusion herein of more than one ASSURED, nor the making of CLAIMS or the bringing of suits by more than one person or entity, shall operate in any way to increase the Certificate Limit of Liability.

IV. DEDUCTIBLE

The Deductible amount stated in Item 4 of the Declarations shall not apply separately to each and every CLAIM first made against the ASSURED during the CERTIFICATE PERIOD and shall also apply to either DAMAGES or CLAIMS EXPENSE, separately or in combination, but only one deductible amount will ever apply to any one CLAIM. Subject to the Limit of Liability stated in Item 3 of the Declarations, the obligation of the Underwriters to indemnify the ASSURED for DAMAGES or CLAIMS EXPENSE, separately or in combination, shall only be in excess of the Deductible amount. The Underwriters shall never have any obligation whatsoever, to any ASSURED or other person or entity, to pay the Deductible amount on behalf of the ASSURED.

## EXCLUSIONS

The coverage under this Certificate shall not apply to DAMAGES or CLAIMS EXPENSE in respect of CLAIMS for, or arising out of, directly or indirectly:

- I. Any WRONGFUL ACT, fact, circumstance or situation:
  - (a) that took place prior to the CONTINUITY DATE, if any ASSURED knew or could have reasonably foreseen that such WRONGFUL ACT, fact, circumstance or situation might be expected to be the basis of a CLAIM, or
  - (b) in respect of which the ASSURED, prior to the commencement of this Certificate, has given written notice to any insurer on any other certificate, whether or not indemnified or collectible in whole or in part under such a certificate.
- II. Any WRONGFUL ACT of the ASSURED while acting as a fiduciary under the Employee Retirement Income Security Act of 1974, Public Law 93-406 and amendments thereto. Nothing in the foregoing shall be deemed to exclude coverage for PROFESSIONAL SERVICES rendered to a fiduciary as otherwise provided by the Certificate.
- III. Any fraudulent, dishonest, criminal or intentional act, error or omission of any ASSURED, or any ASSURED gaining any profit or advantage to which such ASSURED was not legally entitled. This Exclusion shall not apply to any ASSURED who did not commit or have knowledge of such conduct.
- IV. Any actual or alleged bodily injury, sickness, disease or death of any person, or any actual or alleged loss or damage to or destruction of any tangible property, including loss or use thereof.
- V. Any actual or alleged libel, slander, other defamation, invasion of privacy, wrongful entry, eviction, false arrest, false detention or imprisonment, malicious prosecution, assault battery, mental anguish, emotional distress, loss of consortium, violation of civil rights whether arising under State or Federal law, discrimination on the basis of any legally protected status, wrongful termination of employment or other employment related liabilities.
- VI. Liability assumed by the ASSURED by agreement, or under any contract, whether oral or in writing, including but not limited to any express warranties or guaranties, or arising from cost estimates, unless such liability would have attached to the ASSURED in the absence of such agreement or contract.
- VII. The insolvency or bankruptcy of any ASSURED, or of any other person, firm or entity.
- VIII. Any ASSURED's conduct or capacity as a principal, partner, director, officer, member, shareholder, or employee of any individual, corporation, partnership (whether general or limited), joint venture or other entity not specifically designated as a NAMED ASSURED or specifically endorsed hereon.

- IX. Liability of an ASSURED to a person, corporation, partnership or other legal entity (including any subrogee, assignee, contractor, subcontractor, subsidiary, affiliate or division):
- (a) that wholly or partly owns, operates, manages or otherwise controls, directly or indirectly, any ASSURED, or
  - (b) that is, was or in the future becomes wholly or partly owned, operated, managed or otherwise controlled, directly or indirectly, by any ASSURED, or
  - (c) in which any ASSURED has an equity or partnership interest.
- X. Liability of any one or more ASSUREDS under this Certificate to any other one or more ASSUREDS under this Certificate.
- XI. Violation of any provision of the Federal or State Securities laws and any regulations or rules thereunder, including, but not limited to, any WRONGFUL ACT in the offering or sale of securities.
- XII. Any administrative proceedings before the Securities & Exchange Commission ("SEC") or any other similar state agency which results in a consent decree or other form of injunctive relief.
- XIII. Any proceeding or action for regulatory or statutory enforcement brought by or on behalf of any governmental authority, quasi-governmental authority or other regulatory authority or agency.
- XIV. Any WRONGFUL ACT of the ASSURED or PROFESSIONAL SERVICES rendered by the ASSURED after:
- (a) revocation or surrender (voluntary or involuntary) of the NAMED ASSURED's charter or license to do business; or
  - (b) appointment of a conservator, administrator, receiver or liquidator for the NAMED ASSURED; or
  - (c) the NAMED ASSURED consolidates with, merges into, or sells all or substantially all of its assets or liabilities to any person or entity or group of persons acting in concert; or
  - (d) any person or entity or group of persons and/or entities acting in concert acquires an ownership interest in the NAMED ASSURED or in the outstanding stock of the NAMED ASSURED which when combined with any ownership interest in the NAMED ASSURED or its outstanding stock presently owned by such persons represents more than 50% of the ownership of the NAMED ASSURED or more than 50% of the voting power for the election of the directors of the NAMED ASSURED.
- XV. Actual, alleged or threatened seepage, pollution or contamination of any kind, including but not limited to any direction or request that any ASSURED test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any actual, alleged or threatened seepage, pollution or contamination of any kind.
- XVI. The return of or reimbursement of, any fees, commissions, costs or expenses charged by the ASSURED.
- XVII. Any actual or alleged plagiarism, infringement of copyright, trademark or patent.
- XVIII. Any conflict of interest by any ASSURED.

## DEFINITIONS

As used throughout this Certificate:

- I. ASSURED shall mean:
  - (a) the NAMED ASSURED and its predecessors in business;
  - (b) a present principal, partner, director or officer (and estate of any such present principal, partner, director or officer) of the NAMED ASSURED but only while acting solely in his capacity as such on behalf of the NAMED ASSURED;
  - (c) a present employee (and estate of any such present employee) of the NAMED ASSURED but only while acting solely in his capacity as such on behalf of the NAMED ASSURED.
  - (d) a former principal, partner, director, officer or employee (and estate of any such former principal, partner, director, officer or employee) of the NAMED ASSURED, but only while acting solely in his capacity as such on behalf of the NAMED ASSURED during the period of such service with the NAMED ASSURED; provided always that any such ASSURED must have been performing PROFESSIONAL SERVICES.
- II. CERTIFICATE PERIOD shall mean that period of time between the inception and expiration dates specified in Item 2 of the Declarations subject to any earlier termination date and shall include any extended period pursuant to the ASSURED's properly exercised option to purchase extended reporting in accordance with Condition XIV herein. CERTIFICATE PERIOD with respect to Condition X(b) shall not include any Extended Reporting Period under Condition XIV.
- III. CLAIM shall mean:
  - (a) the ASSURED's receipt of a written demand on it for money, services or arbitration; or,
  - (b) the ASSURED's receipt of service of suit seeking DAMAGES against it. Two or more receipts of written demands for money, services or arbitration or of service of suit seeking DAMAGES from the ASSURED arising from a WRONGFUL ACT shall be considered as a single CLAIM for the purposes of this Certificate, irrespective of the number of claimants and all such multiple claims shall be deemed to have been made at the time of the first claim.
- IV. CLAIMS EXPENSE shall mean those fees, costs and expenses reasonably and necessarily incurred by an attorney consented to by the Underwriters to represent the ASSURED and, subject to Condition VII, all other costs, charges and expenses reasonably and necessarily incurred for the investigation, adjustment, settlement, arbitration, defense or appeal of any CLAIM.
- V. CONTINUITY DATE shall mean the date set forth in Item 6 of the Declarations.
- VI. DAMAGES shall mean a judgement, award or settlement monetarily compensating the claimant for financial loss suffered. The term DAMAGES shall not include punitive damages, fines, penalties, awards under RICO or state equivalents thereof, treble or other enhanced damages of any type, or any matters uninsurable under the law under which this Certificate shall be construed.
- VII. NAMED ASSURED shall mean the entity first specified in Item 1 of the Declarations and any of the following:

- (a) any other entity identified in the application for this Certificate whose outstanding stock or ownership interest is more than fifty percent (50%) owned by the first NAMED ASSURED;
- (b) any other entity formed or established by the first NAMED ASSURED after the inception of this Certificate other than through a merger, purchase or other acquisition; but only to the extent said entity provides the same PROFESSIONAL SERVICES as the first NAMED ASSURED;
- (c) any entity acquired by the first NAMED ASSURED through merger, purchase or other acquisition after the inception of this Certificate that provides the same PROFESSIONAL SERVICES as the first NAMED ASSURED, but only if written notice is given within thirty (30) days of such transaction to the Underwriters and the Underwriters give their written consent with respect to such entity to provide some or all of the coverage under this Certificate shall only apply with respect to any WRONGFUL ACT after such entity became and while it is a NAMED ASSURED. In the event any such entity ceases to be a NAMED ASSURED during the Certificate Period, the coverage under this Certificate shall apply with respect to any WRONGFUL ACT while such entity was a NAMED ASSURED, subject to all of the other terms, conditions and limitations of this Certificate.

VIII. PROFESSIONAL SERVICES shall mean those services to others in the ordinary course of the NAMED ASSURED's business as more particularly described by endorsement to this Certificate.

IX. WRONGFUL ACT shall mean any actual or alleged negligent act, error or omission on the part of the ASSURED (together with any other negligent acts, errors, or omissions which are logically or casually connected by reason of any common facts, circumstances, situations, transactions, casualties, events or decisions or related series thereof) in rendering or failing to render PROFESSIONAL SERVICES to others.

## CONDITIONS

### I. ADMISSION OF LIABILITY

The ASSURED shall not, without the prior written consent of the Underwriters, incur any expenses, including but not limited to forgiving or reducing any compensation due or alleged to be due, or make any other payment, assume any obligation, attempt any remedial measure or in any way admit or acknowledge liability in connection with any CLAIM or potential CLAIM.

### II. APPLICATION

By acceptance of this Certificate, all ASSUREDS agree that the statements contained in the application are their agreements, representations and warranties, that they shall be deemed material to the risk or hazard assumed by the Underwriters under this Certificate, that this Certificate is issued in reliance upon the truth thereof, and that this Certificate embodies all agreements existing between themselves and the Underwriters. The application or a copy thereof is attached to and is specifically made a part of this Certificate and is the basis upon which this Certificate is issued. Materials that were attached to the ASSURED's application, or referred to therein, shall be deemed part of this Certificate, even if not attached hereto.

### III. ASSIGNMENT

No assignment or transfer of any ASSURED's rights under this Certificate shall bind the Underwriters. If any ASSURED shall die or be adjudged incompetent, this Certificate shall cover the ASSURED's legal representative an ASSURED with respect to the coverage afforded under this Certificate.

IV. CANCELLATION

The NAMED ASSURED may cancel this Certificate by mailing to the person named in Item 8 of the Declarations written notice starting when thereafter such cancellation shall be effective. The Underwriters may cancel this Certificate by mailing to the NAMED ASSURED, at the mailing address specified in Item 1 of the Declarations, written notice stating when not less than thirty (30) day thereafter such cancellation shall be effective except that for non payment of premium, not less than ten (10) days advance notice of cancellation shall be given. The mailing of notice as aforesaid shall be sufficient proof of the intent to cancel. The date and hour of cancellation specified in such notice shall represent the time of termination of this Certificate. Delivery of such notice shall be equivalent to mailing.

If this NAMED ASSURED cancels, the earned premium shall be computed in accordance with the customary short rate. If the Underwriters cancel, the earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned premium or the return of this Certificate shall not be a condition of cancellation.

V. CHANGES

None of the Insuring Agreements, Exclusions, Definitions or Conditions or other terms of this Certificate shall be amended, waived or otherwise changed except by endorsement hereto signed by an authorized representative of the Underwriters.

VI. CONFORMITY AND SEVERABILITY

Any terms or conditions of this Certificate which are in conflict with any applicable statutes of the State under whose laws the terms or conditions of this Certificate are construed are hereby amended to conform to such statutes. Should any such statute make any portion of this Certificate void, the voided portion shall be considered severed from this Certificate and all other portions shall remain in full force and effect.

VII. COOPERATION AND ASSISTANCE OF THE ASSURED

The ASSURED shall have the duty to fully cooperate with and assist the Underwriters and their representatives with respect to the investigation or settlement of any CLAIM or suit, or upon notification of any potential claim.

It is expressly understood however that in no event shall the ASSURED be reimbursed for loss of earnings or fees, or for internal expenses or costs incurred in cooperating with or assisting the Underwriters in investigating or settling any CLAIM at the direction of the Underwriters or in the ASSURED's defense of any CLAIM, nor shall any such loss of earnings or fees or costs or expenses satisfy the ASSURED's responsibility to pay the Deductible.

VIII. NAMED ASSURED AS AGENT

The NAMED ASSURED initially specified in Item 1 of the Declarations shall be considered the agent of all ASSUREDs with respect to the giving of or receipt of all notices pertaining to this Certificate and shall be responsible for the payment to the Underwriters of all premiums and for payment of the Deductible. Each ASSURED shall remain liable for unpaid premiums and for payment of the Deductible, in the event the NAMED ASSURED fails to make payment thereof.

IX. NO ACTION AGAINST UNDERWRITERS

No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto, the ASSURED shall have fully complied with all the terms and conditions

of this Certificate, nor until the amount of the ASSURED's obligation to pay has been finally determined either by written agreement of the ASSURED, the claimant and the Underwriters, or by final judgement against the ASSURED after the actual trial of the issues and the time to appeal therefrom has expired without an appeal having been taken or, if any appeal has been taken, then until after such appeal has been finally determined.

X. NOTICE TO UNDERWRITERS

(a) NOTICE OF CLAIMS

If any CLAIM is made against the ASSURED, whether or not the alleged DAMAGES fall within or in excess of the Deductible, the ASSURED shall have the duty, as a condition precedent to the ASSURED's rights under this Certificate, to immediately give written notice to the Underwriters via Thompson Heath & Bond Limited, 7<sup>th</sup> Floor, 107 Leadenhall Street, London, EC3A 4AF who shall act on behalf of the Underwriters. Such written notice must contain complete details of the CLAIM including, but not limited to, the exact date CLAIM was first made, the location, the circumstances giving rise to such CLAIM, the identity of all claimants and a full description of the nature and scope of the alleged DAMAGES. The ASSURED must immediately forward every demand, notice, summons or other process received by it or its representative upon receipt thereof to Thompson Heath & Bond Limited. In no event shall the notice required herein be given later than thirty (30) days after the end of the CERTIFICATE PERIOD.

(b) NOTICE OF POTENTIAL CLAIMS

The NAMED ASSURED during this CERTIFICATE PERIOD may provide the Underwriters via Thompson Heath & Bond Limited and Cozen O'Connor, who shall act on behalf of the Underwriters, written notice describing a specific WRONGFUL ACT of which the NAMED ASSURED first becomes aware during this CERTIFICATE PERIOD and which a reasonably prudent person might expect to give rise to a CLAIM. Such written notice must describe:

- (1) the specific WRONGFUL ACT;
  - (2) the nature and date of such WRONGFUL ACT and the manner in which the NAMED ASSURED first became aware thereof;
  - (3) the casual connection between such WRONGFUL ACT and the CLAIM that might be made;
- and
- (4) the potential or alleged injury or damage which has resulted or may result from such WRONGFUL ACT.

If the foregoing conditions are met and a CLAIM thereafter is made against the ASSURED arising from the specific WRONGFUL ACT so reported, such CLAIM shall be considered a CLAIM first made against the ASSURED during this CERTIFICATE PERIOD, provided always that such CLAIM would otherwise be covered under the terms and conditions of the Certificate.

XI. NUCLEAR INCIDENT EXCLUSION CLAUSE – LIABILITY – DIRECT (BROAD)

See attached.

XII. OTHER INSURANCE

The coverage afforded by this Certificate shall be excess of all other applicable insurance, regardless of whether it is stated to be primary, contributory, excess, contingent or otherwise and regardless of whether or not it is valid or collectible, including any deductible portion thereof.

XIII. PREMIUM

The premium for this Certificate shall be the amount specified in Item 5 of the Declarations, together with such additional one hundred percent (100%) of the full annual premium should the extended reporting period be purchased. If during this CERTIFICATE PERIOD there is a change in coverage afforded, the Underwriters shall have the right to adjust such premium as of the date of such change in accordance with the Underwriters' prevailing rules and rates.

XIV. PURCHASE OF EXTENDED REPORTING PERIOD

If the Underwriters shall cancel or refuse to renew this Certificate, the ASSURED shall then have the right, in consideration of an additional premium equal to one hundred (100%) of the full annual premium charged hereunder, to an extension of the cover granted by this Certificate, subject to its terms, conditions, exclusions, definitions and limitations, in respect of any CLAIM made against the ASSURED during the period of three hundred and sixty-five (365) days after the termination date of this Certificate but only when such CLAIM arises solely and directly as a result of PROFESSIONAL SERVICES rendered prior to the termination date of this Certificate.

To exercise this right, the ASSURED must give notice in writing and pay the additional premium not later than thirty (30) days after the termination date of this Certificate and in the event of failure by the ASSURED to give such notice and pay such premium prior to such date, it shall not at a later date be able to invoke this extension. The mailing by the ASSURED by registered mail of notice, enclosing the full additional premium, to the person named in Item 8 of the Declarations shall be sufficient proof of notice. In the event the ASSURED purchases this Extended Reporting Period, the entire premium shall be deemed earned at its commencement.

The Quotation by Underwriters of a different premium or deductible or Limits of Liability or charges in certificate language for the purpose of renewal shall not constitute a cancellation or refusal to renew by the Underwriters.

This Condition XIV does not apply if the ASSURED has failed to pay the full premium for this Certificate or if the Underwriters have given notice of cancellation for a lack of such full payment of premium. Should this Condition XIV be exercised by any ASSURED other than the NAMED ASSURED, it shall be the obligation of the exercising ASSURED to pay the additional premium.

The purchase of this Extended Reporting Period shall not in any way increase the Limit of Liability set forth in Item 3 of the Declarations.

The ASSURED may not purchase the Extended Reporting Period described herein after any of the occurrences set forth in subparts (a) through (d) of Exclusion XIV, and the happening of any such occurrences shall terminate the ASSURED's right to purchase the Extended Reporting Period.

XV. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Certificate, Underwriters hereon, at the request of the ASSURED, will submit to the jurisdiction of a court of competent jurisdiction within the United States. This Condition does not constitute and should not be understood to



constitute an agreement by Underwriters that an action is properly maintained in a specific forum, nor may it be construed as a waiver of Underwriters' rights to commence an action in a 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 of the United States, all of which rights Underwriters expressly reserve. It is further agreed that service of process in such suit may be made upon the person specified for that purpose in Item 7 of the Declarations 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 Underwriters' representatives are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/pr upon the request of the ASSURED to give written undertaking to the ASSURED 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 hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceedings instituted by or on behalf of the ASSURED or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the Underwriters' representatives as the persons to whom the said officer is authorized to mail such process or a true copy thereof.

XVI. SETTLEMENT

The Underwriters shall have the right to negotiate the settlement of any CLAIM as they deem expedient, whether within or in excess of the Deductible. The Underwriters shall not commit the ASSURED to any settlement without the consent of the ASSURED, which decision shall be made promptly by the ASSURED upon written notice to it by Underwriters. If, however, the ASSURED refuses to consent to a settlement recommended by the Underwriters and elects to contest to such CLAIM or continue legal proceedings in connection with such CLAIM, or if the ASSURED fails to pay the Deductible, then in any such case the liability of the Underwriters shall be limited to the amount for which the CLAIM could have been so settled and CLAIMS EXPENSE incurred up to the time of such refusal, subject to this Condition and Insuring Agreements III and IV.

XVII. SUBROGATION

In the event of any CLAIM under this Certificate, the Underwriters shall be subrogated to all of the ASSURED's rights of recovery against any person or entity, and the ASSURED shall execute and deliver to the Underwriters any and all necessary documentation and records and do whatever else is necessary to secure and enforce such rights. The ASSURED shall take no action after any CLAIM is made against it which prejudices such rights of Underwriters.

XVIII. TERRITORY

The obligations of the Underwriters under this Certificate shall apply to any WRONGFUL ACT anywhere in the world, regardless of where claim is brought.

XIX. UNITARY CONTRACT

This Certificate shall be deemed to be a single unitary contract and not a severable contract of insurance with each ASSURED.