



DIRECTORS & OFFICERS INSURANCE
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:

**DIRECTORS & OFFICERS AND ASSURED ORGANIZATION
COVERAGE SECTION**

In consideration of the payment of premium, in reliance upon the statement 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 CLAUSES**

1. Underwriters shall pay on behalf of the **Directors and Officers Loss** resulting from any **Claim** first made against the **Directors and Officers** during the **Certificate Period** for a **Wrongful Act** which is reported to Underwriters pursuant to Section E. of this Coverage Section.
2. Underwriters shall pay on behalf of the **Assured Organization Loss** which the **Assured Organization** is required or permitted to pay as indemnification to any of the **Directors and Officers** resulting from any **Claim** first made against the **Directors and Officers** during the **Certificate Period** for a **Wrongful Act** which is reported to Underwriters pursuant to Section E. of this Coverage Section.
3. Underwriters shall pay on behalf of the **Assured Organization Loss** resulting from any **Claim** first made against the **Assured Organization** during the **Certificate Period** for a **Wrongful Act** which is 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 the **Assured Organization** and the **Directors and Officers**.
2. **Claim** means:
 - a) any written demand for damages or other relief against any of the **Assureds**,
 - b) a formal investigation by a regulatory agency or prosecutor against the **Assureds**, commenced by the service of a subpoena, formal investigative order or similar document upon the **Assureds**, receipt or filing of a notice of charges against the **Assureds**, or receipt by the

Assureds of a written notice from the investigating authority identifying the **Assureds** as a party against whom a formal proceeding may be commenced or indictment sought, or

- c) any civil or criminal judicial, administrative or arbitration proceeding against any of the **Assureds** in which they may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom.
3. **Continuity Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
4. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred by any of the **Assureds** in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:
- a) salaries, wages, overhead or benefit expenses associated with officers 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.
5. **Directors and Officers** means all persons who were, now are, or shall be:
- a) directors, officers, employees, members of the board of managers, or management committee members of the **Assured Organization**, and
 - b) the functional equivalent to directors or officers of the **Assured Organization** in the event the **Assured Organization** is incorporated or domiciled outside the United States, and
 - c) joint venture management committee members where the **Assured Organization** controls in excess of 50% of the joint venture,
- including the spouse of any such director, officer and employee or, in the event of their death, incapacity or bankruptcy, their estates, heirs, legal representatives or assigns.
6. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event or transaction or series of facts, circumstances, situations, events or transactions.
7. **Loss** means damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Directors and Officers** under Insuring Clauses 1. or 2., and the **Assured Organization** under Insuring Clause 3., but shall not include:
- a) that portion of any multiplied damages awarded which exceeds the amount multiplied, 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) punitive or exemplary damages, 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 for such damages, or
- e) the costs to modify or adapt any building or property to be more accessible or accommodating to any disabled person, or
- f) non-monetary relief

8. **Outside Entity** means:

- a) any non-profit organization which is exempt from taxation under the Internal Revenue Code (as amended) in which any of the **Directors and Officers** is a director, officer, trustee, governor, executive director or similar position of the non-profit organization, and
- b) any for-profit organization specifically identified by endorsement to this Certificate.

9. **Wrongful Act** means:

- a) any actual or alleged error, omission, misleading statement, neglect, breach of duty or act by any of the **Directors and Officers**, while acting in their capacity as:
 - (i) a director, officer or employee of the **Assured Organization** or the functional equivalent to a director or officer of the **Assured Organization** in the event the **Assured Organization** is incorporated or domiciled outside the United States; or
 - (ii) a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Assured Organization**, or
- b) any matter claimed against the **Directors and Officers** solely by reason of their serving in such capacity for the **Assured Organization** or a similar position for any **Outside Entity**, or
- c) any actual or alleged error, omission, misleading statement, neglect, breach of duty or act by the **Assured Organization** with respect to Insuring Clause 3. of this Coverage Section only.

C. EXCLUSIONS

1. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim**:
 - a) to the extent such **Claim** is for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property, including loss of use thereof;
 - b) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) 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 Directors & Officers liability insurance policy, or any insurance policy of which this Certificate is a renewal or replacement, or
 - (ii) 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) to the extent it is insured under any other existing valid collectible policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the limit of liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
 - d) 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 **Assured Organization**;
 - e) to the extent such **Claim** is for 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 or common law;
 - f) by, on behalf of, or at the direction of any of the **Assureds**, except and to the extent such **Claim**:
 - (i) is brought derivatively by a security holder of the **Assured Organization** who, when such **Claim** is first made, is acting independently of all of the **Assureds**,

- (ii) is brought by any of the **Assureds** 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 Coverage Section,
 - (iii) is brought by an employee of the **Assured Organization** who is not or was not a director or officer of the **Assured Organization** and where such **Claim** is brought by such employee only in their capacity as a security holder of the **Assured Organization** or whistleblower which is protected under the applicable law,
 - (iv) is brought by the examiner, trustee, receiver, conservator, rehabilitator, debtor in possession, liquidator or other similar official of the **Assured Organization** in any bankruptcy proceeding by or against the **Assured Organization**, or
 - (v) is brought by former Directors or Officers of the **Assured Organization** who have not served as a duly elected or appointed director or officer of the **Assured Organization** for at least four years prior to such **Claim** being first made;
- g) brought about or contributed to by:
- (i) any dishonest, fraudulent or criminal act or omission by any of the **Assureds**, or
 - (ii) any personal profit by any of the **Directors and Officers** to which they were not legally entitled,
- as determined by a judgment or other final adjudication;
- h) to the extent such **Claim** is for the return by any of the **Directors and Officers** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Assured Organization** or **Outside Entity**, which payment without such previous approval shall be held by a court to be in violation of law;
- i) against any of the **Directors and Officers** of any **Subsidiary** or against any **Subsidiary** to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) 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
 - (ii) 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**;

-
- j) to the extent such **Claim** is 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**.
 - k) to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the service of any of the **Directors and Officers** in any position or capacity in any entity other than the **Assured Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
 - (i) such **Claim** is based on the service of any of the **Directors and Officers** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Assured Organization**, and
 - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Directors and Officers**, and
 - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurers.
 - l) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any prior and/or pending litigation as of the **Continuity Date**, or
 - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation;regardless of the legal theory upon which such **Claim** is predicated;
 - m) 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 **Assureds** had knowledge of prior to the **Continuity Date** where such **Assureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
 - n) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters brought by or on behalf of a director, officer, or employee, including any voluntary, seasonal, temporary, leased or independent contracted employee of the **Assured Organization**;
 - o) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any initial public offering undertaken and consummated by the **Assured Organization**, including all activities in connection therewith, or

- (ii) the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission promulgated thereunder, any other federal, state, local or provincial statute relating to securities, or any rules or regulations promulgated thereunder, all as amended, for any **Wrongful Act** actually or allegedly committed subsequent to such initial public offering, or
 - (iii) any equity or debt offering in excess of \$50 million which takes place during the **Certificate Period** and is exempt from the registration requirements of the U.S. Securities and Exchange Commission; provided, however, that this subparagraph (iii) shall not apply if Underwriters have agreed in writing to extend coverage for **Wrongful Acts** in connection with such offering, and the **Assureds** have paid the premium required by Underwriters for such coverage extension; or
 - p) for that portion of **Loss** which is covered under any other Coverage Section of this Certificate.
2. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim** made under Insuring Clause 3. against the **Assured Organization**.
- a) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any written or express contract or agreement, entered into among and between the **Assured Organization** and another party, except and to the extent the **Assured Organization** would have been liable in the absence of such contract or agreement; or
 - b) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) 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
 - (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Assured Organization**,

provided, however that Exclusions a) and b), above, shall not apply to any such **Claim** brought directly, indirectly, or derivatively by one or more of the securities holders of the **Assured Organization** in their capacity as such.

For the purpose of determining the applicability of the Exclusions no **Wrongful Act** shall be imputed to any other natural person, and only the **Wrongful Acts** of any past, present or future Chairman of the Board, President, Chief Executive Officer, Chief Operating Officer or Chief Financial Officer of the **Assured Organization** shall be imputed to the **Assured Organization**.

D. LIMIT OF LIABILITY AND RETENTIONS

1. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item C. of the Declarations relating to this Coverage Section in excess of the amount of the applicable Retention up to the Limit of Liability under this Coverage Section, it being warranted that the remaining percentage 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.
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 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. In the event a **Claim** is covered in part under more than one of the Insuring Clauses set forth in this Coverage Section, the Retentions set forth in Item C. of the Declarations relating to this Coverage Section shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention, as finally determined, shall in no event exceed the largest single Retention applicable to such **Claim**.
5. The Retention applicable to Insuring Clause 2. shall apply to **Loss** resulting from any **Claim** if indemnification by the **Assured Organization** is required by law or is legally permissible to the fullest extent permitted by law, regardless of whether or not actual indemnification by the **Assured Organization** is made, except and to the extent such indemnification is not made by the **Assured Organization** solely by reason of its financial insolvency.
6. Payments of **Loss** by Underwriters shall reduce the Limit of Liability under this Coverage Section. Underwriters shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** payable under Insuring Clause 1. and one or more of the other Insuring Clauses is incurred contemporaneously, Underwriters first shall pay **Loss** payable under Insuring Clause 1. The **Named Assured** may elect through its most senior ranking **Directors and Officers** to decline or defer payment under Insuring Clause 2. or Insuring Clause 3. Underwriters shall have no obligation to pay **Loss** after exhaustion of the Limit of Liability regardless of whether the **Named Assured** has declined or deferred payment. The commencement of a bankruptcy proceeding involving the **Assured Organization** shall not relieve Underwriters of their obligations under this Certificate.

7. If the Additional Limit of Liability for **Directors and Officers** is purchased as indicated in Item C. of the Declarations, the Additional Limit of Liability for **Directors and Officers** is the amount set forth in Item C. of the Declarations. This Additional Limit of Liability for **Directors and Officers** is available solely for **Loss** resulting from any **Claim** against any **Directors and Officers** that is covered under Insuring Clause 1. of this Coverage Section. The Additional Limit of Liability for **Directors and Officers** shall be excess of any insurance available that is specifically excess to this Certificate and such excess insurance must be completely exhausted by payment of loss, damages, or defense costs thereunder before Underwriters shall have any obligation to make any payment on account of the Additional Limit of Liability for **Directors and Officers**.
8. Underwriters shall pay **Costs, Charges and Expenses** no more than once every 90 days.

E. NOTIFICATION

1. The **Assureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give Underwriters notice in writing of any written **Claim** as soon as practicable, but in no event later than 60 days after the end of the **Certificate Period**.
2. A **Claim** shall be deemed made when the General Counsel, Human Resource Director, Risk Manager, a director or an officer of the **Assured Organization** or Underwriters first receive notice of such **Claim**.
3. If, during the **Certificate Period** or the **Optional Extension Period**, any of the **Assureds** first becomes aware of a specific **Wrongful Act** and if the **Assureds**, during the **Certificate Period** or the **Optional Extension Period**, if purchased, 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 for the purposes of this Coverage Section 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 H. of the Declarations for this Certificate.