

Attaching to and forming part of Certificate Number:

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## GENERAL TERMS AND CONDITIONS

### A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

Except for the General Terms and Conditions below or unless stated to the contrary in any Coverage Section, the terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

### B. DEFINITIONS

The following terms, whenever used in this Certificate (including each Coverage Section) in boldface type, shall have the meanings indicated.

1. **Application** means:

- a) the application for this Certificate or any policy of which this Certificate is a renewal, and
- b) any materials submitted therewith, which shall be retained on file by Underwriters and shall be deemed attached hereto, as if physically attached hereto.

2. **Assured Organization** means:

- a) the **Named Assured**,
- b) any **Subsidiary**; and
- c) the **Named Assured** or **Subsidiary** as a debtor in possession under the United States bankruptcy laws or an equivalent status under the law of any other country.

3. **Takeover** means:

- a) the acquisition by any person or entity of more than 50% of the outstanding securities of the **Named Assured** representing the present right to vote for the election of directors,
- b) the merger of the **Named Assured** into another entity such that the **Named Assured** is not the surviving entity, or

- c) the sale or transfer of more than 75% of the value of the assets of the **Assured Organization**. With respect to determining what constitutes 75% of the value of the assets of the **Assured Organization**, the value of the assets will be determined as of the inception of the **Certificate Period**.
4. **Optional Extension Period** means the period described in Item E.2. of the Declarations and Clause H. below.
5. **Named Assured** means the entity named in Item A. of the Declarations.
6. **Certificate Period** means the period from the effective date and hour of the inception 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.
7. **Subsidiary** means any entity with more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors or managers are owned by the **Named Assured**, directly or indirectly, if such entity:
  - a) was so owned prior to the inception date of this Certificate and was insured under a certificate issued by Underwriters of which this Certificate is a renewal,
  - b) was so owned on the inception date of this Certificate, or
  - c) becomes so owned after the inception date of this Certificate.
8. **Run-Off Period** means the period described in Item F.2. of the Declarations and Clause I. below.

Other definitions particular to each Coverage Section are contained in the separate Definitions Clause in each Coverage Section.

## C. LIMITS OF LIABILITY AND RETENTIONS

Unless the **Assureds** have elected to purchase Employment Practices and Directors & Officers and Assured Organization Combined Single Limit Coverage as identified in Item C. of the Declarations, the Limits of Liability and Retentions for all Coverage Sections are separate Limits of Liability and Retentions pertaining to the Coverage Section for which they are shown. The application of a Retention to **Loss** under one Coverage Section shall not reduce the Retention under any other Coverage Section, and no reduction in the Limit of Liability

applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.

If the **Assureds** have elected to purchase Employment Practices and Directors & Officers and Assured Organization Combined Single Limit Coverage as identified in Item C. of the Declarations, the Limits of Liability for the **Employment Practices** and **Directors & Officers and Assured Organization** Coverage Sections are not separate Limits of Liability pertaining to the Coverage Sections for which they are shown and are subject to the maximum aggregate Limit of Liability shown in Item C. of the Declarations. The amount shown in Item C. of the Declarations shall be the maximum aggregate Limit of Liability applicable to the **Employment Practices** and **Directors & Officers and Assured Organization** Coverage Sections.

The Retentions applicable to the **Employment Practices** and **Directors & Officers and Assured Organization** Coverage Sections are separate Retentions for which they are shown. The application of Retention to **Loss** under one of these Coverage Sections shall not reduce the Retention under the other Coverage Section.

The Limits of Liability and Retentions for all other Coverage Sections are separate Limits of Liability and Retentions pertaining to the Coverage Section for which they are shown. The application of Retention to **Loss** under one Coverage Section shall not reduce the Retention under any other Coverage Section, and other than as detailed in the preceding paragraph, no reduction in the Limit of Liability applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.

In the event that any **Claim** or more than one **Claim** arising from **Interrelated Wrongful Acts** shall be covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention shall not exceed the single largest applicable Retention. Such largest applicable Retention shall apply only once to such **Claim**.

#### D. WARRANTY CLAUSE

The **Assureds** represent and warrant that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Certificate is issued in reliance on the truth of that representation, and that such particulars and statements, which are incorporated into and constitute a part of this Certificate are the basis of this Certificate and are material to Underwriters' acceptance of this risk.

It is agreed that in the event the **Application** 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 shall be void and of no effect whatsoever

with respect to any of the **Assureds** who had actual knowledge of such misrepresentations; provided, however, coverage under Insuring Clause 1 of the Directors & Officers and Assured Organization Coverage Section of the Certificate is non-rescindable.

No knowledge or information possessed by any natural person shall be imputed to any other natural person. Only the knowledge of the Chief Executive Officer, President, Chairman, Chief Financial Officer, Chief Operating Officer or General Counsel of the **Assured Organization** shall be imputed to the **Assured Organization**.

Except as provided in this Clause, this Certificate and each Coverage Section shall be deemed to be a single unitary contract and not a severable contract of insurance or a series of individual contracts with each or all of the **Assureds**.

## E. CANCELLATION CLAUSE

1. By acceptance of this Certificate, the **Assureds** hereby confer the exclusive power and authority to cancel this Certificate on their behalf to the **Named Assured**. Such entity may cancel this Certificate by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter cancellation shall be effective. The mailing of this 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. This Certificate may only be cancelled by Underwriters for non-payment of premium by mailing to the **Named Assured** 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 there under.

3. If this Certificate is cancelled, 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.

## F. SPOUSAL EXTENSION

Underwriters agree to extend coverage under each Coverage Section to all persons who were, now are, or shall be the lawful spouse of any natural person who is one of the **Assureds** solely to the extent such spouse is the subject of any **Claim** because of marriage to any such natural person **Assured**.

## G. ASSURED ORGANIZATION AUTHORIZATION CLAUSE

By acceptance of this Certificate, the **Assureds** agree that the **Named Assured** will act on their behalf with respect to the giving of all notice to Underwriters, the receiving of notice from Underwriters, the payment of the premium and the receipt of any return premium.

## H. OPTIONAL EXTENSION PERIOD

1. If this Certificate is cancelled pursuant to Clause E.1. or if Underwriters refuse to renew this Certificate for reasons other than non-payment of premium or non-compliance with the terms and conditions of this Certificate or if the **Named Assured** elects not to renew this Certificate, then the **Named Assured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item E.1. of the Declarations of the total 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 E.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.
2. The quotation of a different premium, retention or limit of liability for renewal does not constitute a cancellation or refusal to renew for the purposes of this clause.
3. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for the 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 received by Underwriters within 30 days after the effective date of cancellation, 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 so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
4. In the event of the purchase of the **Optional Extension Period**, the entire premium therefore shall be deemed earned at its commencement.

5. The exercise of the **Optional Extension Period** shall not in any way increase the limit of Underwriters' liability under any Coverage Section.

## I. RUN-OFF COVERAGE

In the event of a **Takeover**:

1. The **Named Assured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item F.1. of the Declarations of the total premium for this Certificate, to an extension of the coverage granted by this Certificate with respect to any **Claim** first made during the **Run-Off Period**, as set forth in Item F.2. of the Declarations, but only with respect to any **Wrongful Act** committed before the date of the **Takeover**; provided, however, that the additional premium shall be reduced by the amount of the unearned premium from the date of the **Takeover** through the expiration date set forth in Item B. of the Declarations. This additional premium shall be deemed earned at the commencement of the **Run-Off Period**.
2. The election must be made in writing prior to the **Takeover**.
3. If this extension of coverage is elected and purchased then:
  - a) Clause E., above, is deleted in its entirety, and
  - b) Clause H., above, is deleted in its entirety.
4. The exercise of the **Run-Off Period** shall not in any way increase the limit of Underwriters' liability under any Coverage Section.
5. If the **Named Assured** fails to make the election and to purchase the additional Run-Off coverage, the Certificate will continue to provide coverage for any covered **Claim** first made during the **Policy Period**, but only with respect to any **Wrongful Act** that was committed before the date of the **Takeover**.

## J. ALLOCATION

In the event any of the **Assureds** in a **Claim** incur both **Loss** that is covered by the Certificate and also loss which is not covered by the Certificate, then coverage will be allocated by the parties between covered **Loss** and uncovered loss using all reasonable efforts.

## K. ALTERNATIVE DISPUTE RESOLUTION

Any dispute between the **Assureds** and Underwriters arising in connection with or relating to this Certificate shall be submitted either to: (1) non-binding mediation that will be administered by the American Arbitration Association ("AAA"), in which the parties will attempt in good faith to settle their dispute; or (2) binding arbitration in accordance with the rules of the AAA then in effect, except that the arbitration panel shall consist of one arbitrator selected by the **Assureds**, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators. The **Assured Organization** shall act on behalf of each and every Assured in deciding whether to proceed with either a non-binding mediation or binding arbitration.

## L. SETTLEMENTS AND DEFENSE

1. No settlement shall be made or negotiated and no **Costs, Charges and Expenses** shall be incurred without Underwriters' prior consent, such consent not to be unreasonably withheld. Underwriters shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Named Assured**, such consent not to be unreasonably withheld.
2. Subject to the terms and conditions of the Certificate, Underwriters shall have the right and duty to defend any covered **Claim** and such right and duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Named Assured** shall have the right to assume the duty to defend any **Claim** provided Underwriters consent in writing to such assumption. **Costs, Charges and Expenses** incurred by Underwriters, or by the **Assureds** when defending or investigating with the written consent of Underwriters, shall be paid by Underwriters as a part of, and not in addition to, Underwriters' Limit of Liability set forth in Item C of the Declarations for the applicable Coverage section.

## M. ASSISTANCE, COOPERATION AND SUBROGATION

The **Assureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters reasonably may request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Certificate.

In the event of any payments under this Certificate, Underwriters shall be subrogated to the **Assureds'** rights of recovery therefore against any person or entity. The **Assureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as necessary to enable Underwriters effectively to

bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

## N. ASSIGNMENTS AND ACTIONS AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Assureds** shall have fully complied with all of the terms of this Certificate, nor until the amount of the **Assureds'** 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 **Assureds** to determine their liability, nor shall Underwriters be impleaded by the **Assureds** or their legal representative in any **Claim**. Assignment of interest under this Certificate shall not bind Underwriters unless their consent is endorsed hereon.

## O. ENTIRE AGREEMENT

By acceptance of this Certificate, the **Assureds** 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 deemed waived or changed except by written endorsement or rider issued by Underwriters to form part of this Certificate.

## P. 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 any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction.

Nothing in this Clause constitutes or should be deemed to constitute a waiver of Underwriters' right 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, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon Wayne E. Borgeest at Kaufman Borgeest & Ryan LLP, 200 Summitt Lake Drive, Valhall, New York, 10595, and that in such suit instituted against any one of them upon this



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Certificate, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named party is authorized and directed to accept service on behalf of Underwriters in any such suit upon the request of any person or entity to enter a general appearance on behalf of Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Certificate, and hereby designate Wayne E. Borgeest at Kaufman Borgeest & Ryan LLP, 200 Summitt Lake Drive, Valhall, New York, 10595 as the party to whom such officer is authorized to mail such process.

Q. **WORLDWIDE TERRITORY**

This Certificate covers **Claims** made against any **Assured** anywhere in the world and does so without regard to where any alleged act or circumstance giving rise to the **Claim** occurred.