

DECLARATIONS PAGE

**THIS IS A CLAIMS-MADE PROFESSIONAL LIABILITY
INSURANCE CERTIFICATE. PLEASE READ CAREFULLY.**

1. THE INSURED:

{Response}

ADDRESS:

{Response}

2. CERTIFICATE PERIOD:

Inception: {Response}

Expiry: {Response}

{Response}

3. LIMIT OF LIABILITY:

(a){Response} Each **Claim** including **Claims Expenses**

(b){Response} Aggregate for the **Certificate Period** including **Claims Expenses**

4. DEDUCTIBLE:

{Response} Each **Claim** including **Claims Expenses**

5. PREMIUM:

{Response}

6. RETROACTIVE DATE:

{Response}

7. NOTICE OF CLAIM TO:

Professional Underwriters Agency, Inc.
2803 Butterfield Road, Suite 260
Oak Brook, IL 60523

8. NOTICE OF ELECTION:

Professional Underwriters Agency, Inc.
2803 Butterfield Road, Suite 260
Oak Brook, IL 60523

9. SERVICE OF SUIT:

Mendes & Mount
750 Seventh Avenue
New York, NY 10019-6829

10. ENDORSEMENTS:

Please see attached Table of Endorsements and Clauses.

11. SEVERAL LIABILITY NOTICE:

The Underwriters whose names and the percentage underwritten are shown below are referred to 'We', 'Us' and 'Ours'. The subscribing Underwriters obligations under contracts of contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

UNDERWRITERS

% OF 100% LIABILITY

Professional Underwriters Agency, Inc.

Correspondent/Authorized Representative

IMPORTANT NOTICE

Only **Claims** that are first made against **You** that are reported to **Us** in writing while the Certificate is in force qualify for coverage. An **Extended Reporting Period** may also apply to extend the time **You** have to report **Claims** to **Us**. Also, the **Claim** must arise from acts, errors or omissions committed or alleged to have been committed on or after the **Retroactive Date** and before the expiration of the Certificate.

Claims Expenses We pay can reduce – and may completely exhaust – the Limit of Liability available to pay **Damages**. The deductible payable by **You** applies to **Damages** and **Claims Expenses** resulting from each and every **Claim**.

Please review the Certificate carefully in order to determine the coverages available to **You**, and discuss the certificate terms and conditions with **Your** agent or broker.

**TECHNOLOGY PROFESSIONALS
CLAIMS-MADE LIABILITY INSURANCE CERTIFICATE**

In consideration of the payment of the premium, and in reliance on the statements made by **You** in the **Application** and subject to the Limit of Liability, exclusions, conditions and other terms of this Certificate, it is agreed as follows:

I. INSURING AGREEMENT

We agree to pay on Your behalf Damages and Claims Expenses, in excess of the Deductible, which **You** become legally obligated to pay, resulting from any **Claim** so long as it:

- A. was first made against **You** during the **Certificate Period** or **Extended Reporting Period** (if applicable)
- B. was reported to **Us** consistent with Section IX.C of this Certificate and
- C. arises out of a **Wrongful Act** committed or alleged to have been committed by **You** on or after the **Retroactive Date** and before the end of the **Certificate Period**.

II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. **We** shall have the right and duty to appoint and select counsel to defend any **Claim** made against **You** which is payable under the terms and conditions of this Certificate, subject to the Limit of Liability, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Deductible.
- B. **We** shall have the right to make any investigation deemed necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- C. If **You** refuse to consent to any settlement or compromise recommended by **Us** and acceptable to the Claimant and elect to contest the **Claim**, **Our** liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and **We** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **You**.
- D. **We** shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue the defense of any **Claim**, after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses**, or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, **We** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **You**.

III. DEFINITIONS

- A. **"Application"** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other such documents submitted in connection with the underwriting of this certificate or the underwriting of any other certificate **We** issued to **You**, as well as any publicly available documents that are filed by **You** prior to the inception date of this certificate.
- B. **"Bodily Injury"** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- C. **"Claim"** means a written demand received by **You** for money or services, including the service of suit or institution of arbitration proceedings. **"Claim"** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction). Multiple **Claims** arising out of or related to the same **Wrongful Act** or any series of continuous, repeated or interrelated **Wrongful Acts** shall be considered a single **Claim** for the purposes of this Certificate, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.
- D. **"Claims Expenses"** means:
1. reasonable and necessary fees charged by an attorney designated by **Us**; and/or
 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might reasonably give rise to a **Claim**, if incurred by **Us**, or by **You** with **Our** written consent;
 3. **Claims Expenses** do not include any salaries, overhead or other charges **You** incur for any time **You** spend in cooperating in the defense and investigation of any **Claim** or circumstance which might reasonably give rise to a **Claim** under this Certificate.

Claim Expenses are part of and not in addition to the Limit of Liability.

- E. **"Computer Systems"** means computers and associated input and output devices, data storage devices, networking equipment and back up facilities.
- F. **"Computer Virus"** means computer instructions placed on a **Computer System** without the owner or user's knowledge or consent that are designed to harm, impede, corrupt, erase, remove, disrupt or destroy the **Computer System**, electronic data or software or any part of it. **Computer Virus** includes, but is not limited to malicious codes, trojan horses, worms and time or logic bombs.
- G. **"Damages"** means a monetary judgment, award or settlement.

- H. **"Denial of Service"** means the inability of a third party to gain access to **Your Computer System** due to unauthorized attacks or deliberate overloading of bandwidth connections and/or web servers;
- I. **"Extended Reporting Period"** means the 12-month period of time after the end of the **Certificate Period** for reporting actual **Claims**, as provided for in Section **VIII**. of this Certificate.
- J. **"Hacker Attack"** means unauthorized use of or gaining access to **Computer Systems** by a person not authorized to do so or in an unauthorized manner.
- K. **"Media Content"** means data, digital code, images, graphics, sounds, text or any other similar material; .
- L. **"Certificate Period"** means the period of time between the inception date shown in the Schedule and the effective date of termination, expiration or cancellation of this Certificate and specifically excludes any **Extended Reporting Period**.
- M. **"Property Damage"** means injury to or destruction of any tangible property, including the loss of use thereof.
- N. **"Retroactive Date"** is the date in Item 6 of the Schedule. No **Wrongful Act** that takes place or is alleged to have taken place prior to that date is covered under this Certificate. Any and all continuous, repeated, or interrelated **Wrongful Acts** shall be deemed to have been made when the first of these **Wrongful Acts** was made.
- O. **"Subsidiary"** means any corporate entity where more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Insured named in Item 1 of the Schedule directly or indirectly, if such entity:
1. was so owned on the inception date of this Certificate;
 2. becomes so owned after the inception date of this Certificate provided the revenues of the entity do not exceed 10% of the Annual Revenues of the Insured named in the Schedule as set forth in the most recent **Application** for insurance; or
 3. becomes so owned after the inception date of this Certificate provided that if the revenues of the entity exceed 10% of Annual Revenues of the Insured named in the Schedule as set forth in the most recent **Application** for insurance, the provisions of Provision XVII, Mergers and Acquisitions, must be fulfilled.
- P. **"Technology Services"** means electronic media activities, digital services, internet services, data processing services, information services and/or other electronic activities as stated in the Schedule, which are performed for others in the ordinary course of **Your** business . **Technology Services** also includes the origination, gathering, or dissemination of **Media Content** in the ordinary course of **Your** business.

- Q. **"Theft of Electronic Data"** means the unauthorized taking, misappropriation, or misuse of information by a third party that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device which is intended to interact with a **Computer System**, including account information, confidential information, proprietary information and personal information while stored in a **Computer System** maintained to appropriate standards in respect of security and back up procedures.
- R. **"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.
- S. **'We', 'Us' and 'Our'** means the underwriters providing this insurance.
- T. **"Wrongful Act"** means:
- 1. any actual or alleged negligent act, error or omission alleged to have been committed by **You**, solely while performing **Technology Services**
 - 2. any error or omission alleged to have been committed by **You** that results in the:
 - (a) failure to prevent a third party from unauthorized access to, use of, or tampering with, **Computer Systems**, including:
 - (i) **Hacker Attacks**
 - (ii) **Computer Virus** attacks or
 - (iii) **Theft of Electronic Data**.
 - (b) inability of an authorized third party to gain access to **Your** services including **Denial of Service**, unless such inability is caused by a mechanical, telecommunications or electrical interruption or failure; or
 - 3. defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization; or
 - 4. invasion, or interference with the right to privacy or publicity; or
 - 5. false arrest, detention or imprisonment or malicious prosecution; or
 - 6. infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping; or

7. infringement of copyright, domain name , trade dress title or slogan or the dilution or infringement of trademark, service mark, service name or trade name; or
8. plagiarism, piracy or misappropriation of ideas; or
9. liability regarding any **Media Content** for which **You** are responsible; or
10. negligent and/or inadvertent transmission by **You** to a third party of any **Computer Virus**,

provided always that any **Wrongful Act** was committed or alleged to have been committed by **You** on or after the **Retroactive Date** and before the end of the **Certificate Period**.

U. **"You"** or **"Your"** or **"Yours"** means;

1. the Insured named in Item 1 of the Schedule;
2. any **Subsidiary** but only with respect to **Wrongful Acts** which occur while it is a **Subsidiary** and otherwise covered by this Certificate;
3. any past, present or future officer, director, trustee or employee of the Insured named in Item 1 of the Schedule or any **Subsidiary** and in the event that **You** are a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal, stockholder, owner thereof, but only while acting within the scope of their duties as such;
4. any agent or independent contractor, including distributors, licensees and sub-licensees, but only whilst acting on **Your** behalf at **Your** direction, and under **Your** control.

IV. EXCLUSIONS

The coverage under this Certificate does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- A. Based upon, arising out of, directly or indirectly, or in any way involving, any fraudulent, criminal, malicious or dishonest **Wrongful Act**. However notwithstanding the foregoing, this exclusion does not apply to **Claims Expenses** incurred in defending any such **Claim** where a final adjudication shall establish no fraudulent, criminal, malicious or dishonest conduct;
- B. made by any person or entity within the definition of **You** against any other Insured person or entity within the definition of **You**;

- C. Based upon, arising out of, directly or indirectly, or in any way involving , **Bodily Injury** or **Property Damage**; however, this exclusion for **Property Damage** shall not apply to data, information or software, if the tangible property on which it resides is not physically damaged, lost or destroyed.
- D. Based upon, arising out of, directly or indirectly, or in any way involving:
1. **Your** future royalties or future profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive or equitable relief;
 2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
 3. any **Damages** which are a multiple of compensatory damages, or fines, sanctions or penalties;
 4. punitive or exemplary damages, unless insurable by law; or
 5. any amounts for which **You** are not liable, or for which there is no legal recourse against **You**.
 6. production costs, or the cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing or reproducing erroneous, damaged or lost tangible property;
- E. Based upon, arising out of, directly or indirectly, or in any way involving, **Your** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including but not limited to the failure, inability, or unwillingness to make payments or pay benefits due to the insolvency, liquidation or bankruptcy of any individual or entity;
- F. Made by any business enterprise that is operated or controlled by **You** or in which **You** have greater than a 15% ownership interest, or which wholly or partly owns, operates, controls or manages **You**.
- G. Based upon, arising out of, directly or indirectly, or in any way involving, any activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the Insured named in Item 1 of the Schedule or any **Subsidiary**;
- H. Based upon, arising out of, directly or indirectly, or in any way involving, any **Wrongful Act** committed or alleged to have been committed prior to the inception date of this Certificate:
1. if on or before the inception date **You** knew or could have reasonably foreseen that such **Wrongful Act** might reasonably be expected to give rise to a **Claim**; or
 2. in respect of which **You** have given notice of a **Claim**, or circumstances that might reasonably give rise to a **Claim**, to the insurer of any other certificate in force prior to the inception date of this Certificate;

- I. Based upon, arising out of, directly or indirectly, or in any way involving, any liability assumed by **You** under any contract or agreement including any breach of express warranty or guarantee, whether oral or written, except and to the extent **You** would have been liable in the absence of such contract or agreement;
- J. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged infringement of any patent or **Trade Secret**;
- K. Based upon, arising out of, directly or indirectly, or in any way involving, 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;
- L. Based upon, arising out of, directly or indirectly, or in any way involving, any employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees;
- M. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- N. Based upon, arising out of, directly or indirectly, or in any way involving, any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
- O. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws;
- P. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged act or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by **You** or any directors, officers, bondholders, stockholders or employees of **Yours** in their capacity as such;
- Q. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising;
- R. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of **Your** cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;

- S. Based upon, arising out of, directly or indirectly, or in any way involving, 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**;
- T. Based upon, arising out of, directly or indirectly, or in any way involving, any manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibers or dust;
- U. Based upon, arising out of, directly or indirectly, or in any way involving, 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;
- V. Based upon, arising out of, directly or indirectly, or in any way involving, any presence or actual, alleged, or threatened discharge, seepage, dispersal, migration, release, escape, generation, transportation, storage, or disposal of pollutants at any time, including any request, demand or order that **You** or others test for, monitor, clean up, remove, assess, or respond to the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- W. Based upon, arising out of, directly or indirectly, or in any way involving, 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;
- X. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged electrical or mechanical failures and or interruption, including an electrical disturbance, surge, spike, brownout or blackout;
- Y. Based upon, arising out of, directly or indirectly, or in any way involving, any wear or tear, latent or time delayed **Damages** arising from services provided prior to the **Retroactive Date** or gradual deterioration or **Your** failure to maintain any computer, **Computer System** or network, computer software or any other equipment;
- Z. Based upon, arising out of, directly or indirectly, or in any way involving, any actual or alleged obligation to make licensing or royalty payments.
- AA. Based upon, arising out of, directly or indirectly, or in any way involving, any withdrawal or recall of electronic products or systems or of work compiled by **You** or on **Your** behalf or any property of which such products forms a part. However, this exclusion shall not apply to **Claims** by third parties caused solely by loss of use caused by **Your Wrongful Act**. Loss of use means the inability to use or access such electronic products, systems, work or property resulting from withdrawal or recall of such products, systems, work or property.

- AB. Based upon, arising out of, directly or indirectly, or in any way involving war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion, an act of terrorism means an act, including but not limited to, the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organization or government, committed or alleged to have been committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. This exclusion also excludes **Damages** or **Claims Expenses** incurred with respect to any **Claim** directly or indirectly caused by or arising out of any action taken in controlling, preventing, suppressing or in any way relating to WAR or TERRORISM as described above. If **We** allege that by reason of this exclusion, any loss, Damage, **Claims Expense**, cost or expense, is not covered by this Certificate, the burden of proving the contrary shall be upon **You**.

V. LIMIT OF LIABILITY

- A. The "Aggregate" stated in Item 3(b) of the Schedule is **Our** combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or circumstances which might reasonably give rise to a **Claim** which are covered under the terms and conditions of this Certificate.
- B. The Limit of Liability stated in Item 3(a) of the Schedule for "Each **Claim**" is the limit of **Our** Liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- C. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Certificate for the **Certificate Period**.
- D. Multiple **Claims** arising out of the same **Wrongful Act** or series of continuous, repeated or interrelated **Wrongful Acts** shall be considered a single **Claim** for the purposes of this Certificate, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim** and be subject to the Limits of Liability stated in Item 3(a) and Item 3(b) of the Schedule.

VI. DEDUCTIBLE

The "Each **Claim** deductible" stated in Item 4. of the Schedule applies separately to each and every **Claim**. The Deductible shall be satisfied by payments by **You** of **Damages** and **Claims Expenses** resulting from **Claims** first made and reported to the **Us** during the **Certificate Period** and the **Extended Reporting Period** as a condition precedent to the payment by **Us** of any amounts hereunder, and **We** shall be liable only for the amounts in excess of such Deductible subject to the **Our** total liability not exceeding the limits stated in Items 3(a) and 3(b) of the Schedule. **You** shall make direct payments within the Deductible to appropriate other parties designated by **Us**.

VII. INNOCENT INSURED

- A. Whenever coverage under this Certificate would be excluded, suspended or lost:
1. because of Exclusion IV.A relating to fraudulent, criminal, malicious or dishonest **Wrongful Act** by **You**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
 2. because of non-compliance of Condition IX.A or B relating to the giving of notice of **Claim**, or circumstances that might reasonably give rise to a **Claim**, to **Us** with respect to which any of **You** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more of **You** responsible for the loss or damage otherwise insured hereunder,

then such coverage as would otherwise be afforded under this Certificate shall cover and be paid with respect to those of **You** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of:

1. one or more of the **Wrongful Acts** described in Exclusion A; or
2. such failure to give notice, provided that **You** are entitled to the benefit of this provision under condition IX.A or B shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured to comply therewith, and that the reporting of any such **Claim** must be made during the **Certificate Period** or the **Extended Reporting Period**, if applicable.

This provision is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the Insured named in Item 1 of the Schedule and any **Subsidiaries** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the Insured named in Item 1 of the Schedule and any **Subsidiaries** .

- B. With respect to this provision, **Our** obligation to pay in such event shall be in excess of the full extent of any recoverable assets of any of **You** to whom Exclusion IV.A applies and shall be subject to the terms, conditions and limitations of this Certificate.

VIII. EXTENDED REPORTING ENDORSEMENT

- A. In the event of cancellation or non-renewal of this Certificate by **Us**, **You** shall have the right to purchase an **Extended Reporting Period** to apply to **Claims** first made against **You** and reported to **Us** during the **Extended Reporting Period** for a period of 12 months for an additional premium of 125% of the Premium set forth in Item 5 of the Schedule, but only with respect to **Claims** arising out of **Wrongful Acts** committed on or after the **Retroactive Date** and before the date of such cancellation or non-renewal. The **Extended Reporting Period** is subject to all other terms, conditions, limitations of, and any endorsements to, this Certificate. In order for **You** to invoke the **Extended Reporting Period** option, the payment of the additional premium for the

Extended Reporting Period must be paid to **Us** within 30 days of the non-renewal or cancellation.

- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability for the **Certificate Period**.
- C. The quotation by **Us** of a different premium or deductible or Limit of Liability or changes in certificate language for the purpose of renewal shall not constitute a refusal to renew by **Us**.
- D. The right to the **Extended Reporting Period** shall not be available to **You** where cancellation or non-renewal by **Us** is due to non-payment of premium or **Your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- E. All notices and premium payments with respect to the **Extended Reporting Period** option shall be directed to **Us** through the entity named in Item 8. of the Schedule.
- F. At the commencement of the **Extended Reporting Period** the entire premium shall be deemed earned, and in the event **You** terminate the **Extended Reporting Period** for any reason prior to its natural expiration, **We** will not be liable to return any premium paid for the **Extended Reporting Period**.

IX. NOTICE OF CLAIM, OR CIRCUMSTANCE WHICH MIGHT REASONABLY GIVE RISE TO A CLAIM

- A. If any **Claim** is made against **You**, then **You** shall immediately forward to **Us** through persons named in Item 7. of the Schedule every demand, notice, summons or other process received by **You** or **Your** representative.
- B. If during the **Certificate Period**, **You** become aware of any circumstance that might reasonably give rise to a **Claim**, **You** must give written notice to **Us** through persons named in Item 7. of the Schedule as soon as practicable during the **Certificate Period** of:
 - 1. the specific details of the **Wrongful Act** that could reasonably be the basis for a **Claim**;
 - 2. the injury or damage which may result or has resulted from the circumstance; and
 - 3. the facts by which **You** first became aware of the **Wrongful Act**.

Any subsequent **Claim** arising out of such circumstance made against **You** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **Us**.

- C. A **Claim** shall be considered to be reported to **Us** when notice is first given to **Us** through persons named in Item 7. of the Schedule of the **Claim** or of a **Wrongful Act** which might reasonably give rise to a **Claim** if provided in compliance with B above.

- D. In the event of non-renewal of this Certificate by **Us**, **You** shall have thirty (30) days from the expiration date of the **Certificate Period** to notify **Us** of **Claims** made against the **You** during the **Certificate Period** which arise out of **Wrongful Acts** committed or alleged to have been committed prior to the termination date of the **Certificate Period** and otherwise covered by this Certificate.
- E. If **You** make any **Claim** under this Certificate knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Certificate shall become null and void and all coverage hereunder shall be forfeited.

X. ASSISTANCE AND COOPERATION

You shall cooperate with **Us** in all investigations, including investigations regarding the **Application** for and coverage under this Certificate. **You** shall execute or cause to be executed all papers and render all assistance as is requested by **Us**.

Upon **Our** request, **You** shall assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **You** because of **Wrongful Acts** with respect to which coverage is afforded under this Certificate; and **You** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

You shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without **Our** consent.

Expenses incurred by **You** in assisting and cooperating with **Us**, as described above, do not constitute **Claims Expenses** under the Certificate.

XI. OTHER COVERAGE

This Certificate shall apply in excess of any other valid and collectible insurance available to **You**, including any self insured retention or deductible portion thereof, unless such other insurance is written only as specific excess Certificate over the Limit of Liability of this Certificate.

XII. ACTION AGAINST US

No action shall lie against **Us** or **Our** representatives unless, as a condition precedent thereto: (1) there shall have been full compliance with all terms of this Certificate; and (2) until the amount of **Your** obligation to pay shall have been finally determined either by judgment or award against **You** after actual trial or arbitration or by written agreement by **You**, **Us** and the Claimant.

Any person or organization or the legal representative thereof who has secured such judgment, award or written agreement shall thereafter be entitled to make a **Claim** under this Certificate to the extent of the coverage afforded by this Certificate. No person or organization shall have any right under this Certificate to join **Us** as a party to an action or other proceeding against **You** to determine **Your** liability, nor shall **We** be impleaded by **You** or **Your** legal representative.

Your bankruptcy or insolvency shall not relieve **Us** of **Our** obligations hereunder.

XIII. SUBROGATION

In the event of any payment under this Certificate, **We** shall be subrogated to all **Your** rights of recovery therefore against any person or organization, and **You** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by **Us**, and third to the Deductible. Any additional amounts recovered shall be paid to **You**.

XIV. WARRANTY BY YOU

By acceptance of this Certificate, **You** agree that the statements contained in the **Application**, any **Application** for coverage of which this Certificate is a renewal, and any supplemental materials submitted therewith, are **Your** agreements and representations, that they shall be deemed material to the risk assumed by **Us**, and that this Certificate is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by **You** or **Your** agent in the **Application**, any **Application** for coverage of which this Certificate is a renewal, or any supplemental materials submitted therewith will render the Certificate null and void and relieve **Us** from all liability under the Certificate.

The **Application** and any **Application** for coverage of which this Certificate is a renewal, and any supplemental materials submitted therewith, are deemed incorporated into and made a part of this Certificate.

XV. TERRITORY

This Certificate applies to **Claims** made anywhere in the world.

XVI. ENTIRE AGREEMENT

By acceptance of the Certificate, **You** agree that this Certificate embodies all agreements between **You** and **Us** relating to this Certificate. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Certificate or stop **Us** from asserting any right under the terms of this Certificate; nor shall the terms of this Certificate be waived or changed, except by endorsement issued to form a part of this Certificate, signed by **Us**.

XVII. MERGERS AND ACQUISITIONS

- A. If during the **Certificate Period**, **You** or any **Subsidiary**:
1. purchases another entity or **Subsidiary** in an amount greater than ten percent (10%) of **Your** assets as listed in its most recent financial statement; or
 2. acquires another entity or acquires or creates a **Subsidiary** whose annual revenues are more than ten percent (10%) of **Your** total annual revenues as set forth in the most recent **Application** for insurance;

then **You** shall have no coverage under this Certificate for any **Claim** that arises out of any **Wrongful Act** whether committed either before or after such purchase or acquisition unless **You** give **Us** written notice prior to the purchase or acquisition, obtain **Our** written consent to extend coverage to such additional entities, assets or exposures, and agree to pay any additional premium required by **Us**.

- B. No coverage shall be provided under this Certificate for any **Claim** that arises out of any **Wrongful Act** committed or alleged to have been committed at any time when such entity or **Subsidiary** was not owned and controlled by **You**, without **Our** prior written consent, and **Your** agreement to such additional premium and amended terms as determined by **Us**.
- C. If during the **Certificate Period** **You** consolidate or merge with or are acquired by, another entity, then all coverage under this Certificate shall terminate at the date of the consolidation, merger or acquisition, unless **We** have issued an endorsement extending coverage under this Certificate, and **You** have agreed to any additional premium and terms of coverage required by **Us**.
- D. All notices and premium payments made under this section shall be directed to **Us** through the entity named in Item 8. of the Declarations.

XVIII. ASSIGNMENT

No change in, modification of, or assignment of interest under this Certificate shall be effective except when made by written endorsement signed by **Our** authorized representative.

XIX. CANCELLATION

- A. **You** may cancel this Certificate by surrender thereof to **Us** by mailing to **Us** through the entity named in Item 8. of the Schedule written notice stating when thereafter the cancellation shall be effective. **We** may cancel this Certificate by mailing to **You** at the address shown in the Schedule written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if **We** cancel this Certificate because **You** have failed to pay a premium when due, this Certificate may be cancelled by **Us** by mailing a written notice of cancellation to **You** at the address shown in the Schedule stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Certificate Period**. Delivery (where permitted by law) of such written notice either by **You** or **Us** shall be equivalent to mailing.
- B. If **You** cancel this Certificate prior to reporting any **Claim** under this Certificate, thirty percent (30%) of the premium shall be deemed earned upon inception of the Certificate, and the remaining earned premium shall be computed in accordance with the customary short rate table and procedure;
- C. If **We** cancel this Certificate prior to any **Claim** being reported under this Certificate, earned premium shall be computed pro rata;

- D. The premium shall be deemed fully earned if any Claim under this Certificate is reported to Us on or before the date of cancellation.
- E. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

XX. SINGULAR FORM OF A WORD

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

XXI. TITLES OF PARAGRAPHS

The titles of paragraphs sections, provisions or endorsements of or to this Certificate are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Certificate.

XXII. YOU AS AGENT

The entity specified in Item 1. of the Schedule shall be considered the agent of all those insured, and shall act on behalf of all those insured with respect to the giving of or receipt of all notices pertaining to this Certificate, the acceptance of any endorsements to this Certificate, and shall be responsible for the payment of all premiums and deductibles.

XXIII. SERVICE OF SUIT

It is agreed that in the event of the failure of Us to pay any amount claimed to be due, We at Your request, 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 Our 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 service of process in such suit may be made upon the firm noted in Item 9 of the Schedule, and that in any suit instituted against any one of Us upon this contract, We will abide by the final and unappealable decision of such Court or of any Appellate Court including in the event of an appeal.

The representative designated in Item 9 of the Schedule is authorized and directed to accept service of process on Our behalf in any such suit and/or upon Your request to give a written undertaking to You that they will enter a general appearance upon Our behalf in the event that 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, We designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or their successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on Your behalf 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.