

Policy Number:

305 Madison Avenue Morristown, NJ 07962

North River Insurance Company

**MISCELLANEOUS PROFESSIONAL LIABILITY
PLATINUM MANAGEMENT PROTECTION**

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY PROVIDES COVERAGE FOR *CLAIMS* FIRST MADE AGAINST THE *INSUREDS* AND REPORTED TO THE *INSURER* DURING THE *POLICY PERIOD*. *DEFENSE EXPENSES* ARE INCLUDED WITHIN THE LIMIT OF LIABILITY AND REDUCE THE LIMIT OF LIABILITY. PLEASE READ CAREFULLY. WORDS AND PHRASES WHICH ARE PRINTED IN ***BOLD ITALIC TYPEFACE*** HAVE SPECIFIC MEANING AND ARE DEFINED IN SECTION IV. OF THE POLICY.

Item 1.	<i>Named Insured & Street Address:</i>
Item 2.	<i>Policy Period:</i> From _____ (Effective) To _____ (Expiration) (12:01 a.m. local time at the address shown in Item 1)
Item 3.	<i>Limit of Liability:</i> \$ _____ each <i>Claim</i> and in the <i>Policy Aggregate</i> inclusive of <i>Defense Expenses</i>
Item 4.	<i>Deductible:</i> \$ _____ each claim inclusive of <i>Defense Expenses</i>
Item 5.	<i>Premium:</i> \$ _____
Item 6.	<i>Professional Services:</i>
Item 7.	<i>Prior Acts Date:</i>
Item 8.	<i>Extended Reporting Period:</i> (a) _____ Months (b) Additional Premium: _____ % of the annual premium
Item 9.	The following endorsements, if any, are made a part of this policy at issuance:

These Declarations, the application, and the policy with endorsements attached thereto, constitute the entire agreement between the *Insurer* and the *Insured*.

Countersigned (if required by law): _____ Date: _____

MISCELLANEOUS PROFESSIONAL LIABILITY

In consideration of the payment of premium, the undertaking of the *Insured* to pay the Deductible herein, and in reliance upon the application (attached hereto) and all the information provided to the *Insurer*, and subject to the Declarations, definitions, terms, conditions, limitations, representations, exclusions and endorsements herein and/or attached hereto, the *Insurer* and the *Insured* agree as follows:

I. INSURING AGREEMENT

A. Coverage

Subject to the Limit of Liability stated in Item 3. of the Declarations, the *Insurer* shall pay on behalf of the *Insured* all *Damages* and *Defense Expenses* in excess of the Deductible as stated in Item 4. of the Declarations that the *Insured* becomes legally obligated to pay as a result of a *Claim* first made against the *Insured* and reported in writing to the *Insurer* during the *Policy Period* or during the Extended Reporting Period, if purchased, by reason of a *Wrongful Act* in the performance of *Professional Services* by the *Insured* or by someone for whom the *Insured* is legally responsible, provided that such *Wrongful Act* was committed in whole or, or subsequent to, the *Prior Acts Date* specified in Item 7. of the Declarations.

B. Defense

Subject to the terms, conditions and exclusions appearing in other Sections of this policy, the *Insurer* has the right and duty to defend any covered *Claim* including, but not limited to, the appointment of legal counsel, even if any of the allegations of the *Claim* are groundless, false or fraudulent.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of Liability

1. The *Insurer's* Limit of Liability for *Damages* and *Defense Expenses* combined, for all *Claims* first made and reported to the *Insurer* during the *Policy Period*, including the Extended Reporting Period, if purchased, shall not exceed the amount shown in Item 3. of the Declarations.
2. *Defense Expenses* are included within, and shall reduce, the Limit of Liability available to pay *Damages*.
3. The Limit of Liability shall apply excess of the Deductible amount.
4. The Limit of Liability available for *Claims* first made against the *Insured* and reported to the *Insurer* during the Extended Reporting Period, if purchased, shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. The Extended Reporting Period, if purchased, shall not provide a new, additional or renewed Limit of Liability.
5. If the *Insurer* has exhausted the applicable Limit of Liability by payment of *Damages* and/or *Defense Expenses* or by tendering the remaining Limit of Liability into court, it shall have no further duties to the *Insured* under this policy.

B. Deductible

The *Insurer* shall only be liable for amounts payable under this policy for *Damages* or *Defense Expenses* which are in excess of the Deductible amount shown in Item 4 in the Declarations. This Deductible amount shall apply separately to each and every *Claim* and shall be borne by the *Insured* and shall remain uninsured. The Deductible amount applies to the payment of *Damages* and *Defense Expenses*. In the event of multiple *Claims* that are deemed a single *Claim* pursuant to Section II.C., below, a single Deductible amount will apply.

C. Multiple Insureds, Claims and Claimants

The Limit of Liability shown in Item 3. of the Declarations shall be the *Insurer's* maximum liability for all *Damages* and *Defense Expenses* combined, regardless of the number of *Claims*, *Insureds*, claimants or allegations. All *Claims* arising from the same *Wrongful Acts* and all *Claims* arising from *Related Wrongful Acts* shall be deemed one *Claim* and such *Claim* shall be deemed to have been first made on the earliest date that any of such *Claims* was first made.

III. EXTENSIONS OF COVERAGE

A. Estates, Heirs, Bankruptcy Extension

In the event of the death or incapacity of the *Insured*, or the bankruptcy of the *Insured*, any *Claim* made against any heir, executor, administrator, assignee or legal representative of the *Insured* or against any trustee in bankruptcy of the *Insured*, which is based upon any real or alleged *Wrongful Act* of such *Insured*, shall be deemed to be a *Claim* made against such *Insured* for the purposes of this policy. Bankruptcy or insolvency of the *Insured* or of the *Insured's* estate will not relieve the *Insurer* of any of its obligations hereunder.

B. Spousal And Domestic Partner Extension

If a *Claim* is made against the lawful spouse or lawful domestic partner of an *Insured* which includes a *Claim* for a *Wrongful Act* made against an *Insured*, then such *Claim* shall be deemed a *Claim* made against such *Insured*, provided his or her lawful spouse or lawful domestic partner is represented by the same legal counsel and that such *Claim* is made solely by reason of such lawful spouse's or lawful domestic partner's status as such. This extension, however, shall not apply to any *Claim* alleging any *Wrongful Act* committed or alleged to have been committed by the lawful spouse or lawful domestic partner of an *Insured*.

C. Personal Injury Extension

Subject to all other terms, conditions and exclusions, this policy covers *Damages* and *Defense Expenses* the *Insured* becomes legally obligated to pay resulting from *Claims* arising out of *Personal Injury*.

D. Extended Reporting Period

Upon the expiration or cancellation of this policy for reasons other than the nonpayment of premium due hereunder, the *Insured* shall have the right, upon payment of the additional premium stated in Item 8.(b) of the Declarations and solely for the length of time stated in Item 8.(a) of the Declarations commencing on the effective date of non renewal or cancellation, to report *Claims* pursuant to Section VI.A. of General Conditions, Notice of *Claim* or Circumstance. Coverage under such extension of time to report a *Claim* (hereinafter referred to as the "Extended Reporting Period") shall apply solely to *Wrongful Acts* committed, attempted or allegedly committed or attempted, in whole, prior to the effective date of nonrenewal or cancellation, whichever occurs first, and which are not otherwise excluded by any terms, conditions or exclusions of this policy.

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this policy must have been paid. If the Extended Reporting Period is requested by the *Insured*, the additional premium stated in Item 8.(b) shall be fully earned, and the Extended Reporting Period cannot be canceled by the *Insureds* or the *Insurer*. This right to purchase the Extended Reporting Period shall lapse unless written notice of such election, together with payment of the additional premium due, is received by the *Insurer* no later than thirty days following the effective date of cancellation or nonrenewal, whichever occurs first.

E. Deductible Credit for Mediation

The *Insurer* will reduce the Deductible amount stated in Item 4. of the Declarations by 50% in respect of any *Claim* which is resolved in its entirety by mediation prior to the filing of a lawsuit.

IV. DEFINITIONS

Claim means:

- (a) a written demand or civil proceeding,
- (b) service of suit, or
- (c) institution of arbitration proceedings

seeking *Damages* arising from a *Wrongful Act* by the *Insured* in the performance of or failure to perform *Professional Services*.

Damages means any monetary judgment (including pre- and post- judgment interest awarded against the *Insured*), monetary award or monetary settlement negotiated with the *Insurer's* written consent. If the *Insurer* makes an offer to pay the applicable Limit of Liability, it will not pay any prejudgment interest based on the period of time after such offer is made.

Damages shall not include:

- (a) Any restitution, disgorgement, unjust enrichment or illegal profits by an *Insured*;
- (b) return or offset of fees, charges, premiums or commissions for goods or services provided or contracted to be provided by an *Insured*;
- (c) punitive or exemplary damages, awards or judgments or any amounts which are a multiple of compensatory damages, awards or judgments, except to the extent insurance for such damages, awards or judgments is permitted by law and is not otherwise excluded by the provisions of this policy. For the purposes of determining whether such damages are insurable, the law of the state of incorporation or principal place of business of the *Insured* or the *Insurer*, the state where the *Wrongful Act* took place, or the state where the damages are awarded or imposed, whichever is most favorable to the *Insured*, shall control any dispute between the *Insured* and the *Insurer*;
- (d) civil fines, fines, taxes or loss of taxes, sanctions or penalties;
- (e) discounts, coupons, prizes, awards or other incentives offered to past, present or future customers of the *Insured*;
- (f) any amounts for which the *Insured* is not legally liable or for which there is no legal recourse against the *Insured*;
- (g) subject to (c), above, amounts deemed uninsurable under the law pursuant to which this policy shall be construed;
- (h) amounts paid to comply with any injunctive order or other non-monetary or declaratory relief or award, including amounts ordered to be paid to comply with specific performance or any agreement to provide such relief.

Defense Expenses mean reasonable and necessary fees charged by attorneys designated or approved by the *Insurer* and all other reasonable and necessary fees, costs and expenses resulting from the adjustment, negotiation, arbitration, mediation, defense or appeal of a *Claim*, including premiums on appeal, attachment or similar bonds; provided, however, that this provision does not obligate the *Insurer* to apply for or furnish any such bond. *Defense Expenses* do not include salaries, charges, wages, loss of wages or expenses of any partner, principal, director, officer, member or employee of the *Insured* or the *Insurer*. The determination of the reasonableness of *Defense Expenses* shall be made by the *Insurer* and shall be conclusive.

Insured means the *Named Insured* and:

- (a) any *Subsidiary*, but only with respect to *Wrongful Acts* committed while it is a *Subsidiary*;
- (b) any (i) present, former or future principal, partner, director, officer, member or employee of the *Named Insured* or of a *Subsidiary* thereof, and (ii) general or managing partner or principal of the *Named Insured* or of a *Subsidiary*, if the entity shown in Item 1. of the Declarations, or a *Subsidiary*, is a partnership, limited liability partnership or limited liability company,

but only with respect to *Professional Services* performed within the scope of their duties on behalf of the *Named Insured* or on behalf of a *Subsidiary*;
- (c) the estate, heirs, executors, administrators, assigns and legal representatives of the *Named Insured* or of a *Subsidiary* or of a person within the meaning of (b) and (c) above, but only in the event of such entity's or person's death, incapacity, insolvency or bankruptcy, and only to the extent that such person or entity would otherwise have been provided coverage under this policy.

Insurer means the insurance company named in the Declarations.

Named Insured means the entity(ies), individual, partnership or corporation stated in Item 1. of the Declarations.

New Professional Services means all *Professional Services* not listed in Item 6. of the Declarations for which coverage has not been granted at the effective date of this policy.

Personal Injury means false arrest, detention or imprisonment; malicious prosecution; the publication or utterance of a libel or slander or other defamatory or disparaging statement or disparaging material, or a publication or utterance in violation of a person's right of privacy; the wrongful eviction of a person from a residence; wrongful entry into, or invasion of the right of private occupancy.

Policy Period means the length of time between the effective and expiration dates shown in Item 2. of the Declarations.

Policy Aggregate means the amount identified in Item 3. of the Declarations and represents the maximum amount of the **Insurer's** liability for all **Claims**, all **Damages** and all **Defense Expenses** combined under this policy, inclusive of the Extended Reported Period, if purchased.

Prior Acts Date means the date shown in Item 7. of the Declarations.

Professional Services means those services stated in Item 6. of the Declarations when performed by the **Insured** in the ordinary conduct of the **Insured's** profession for or on behalf of a customer or client for a fee and for which the **Insured** is legally liable.

Pollutants mean any solid, liquid, gaseous or thermal irritant, contaminant or toxin including, but not limited to, smoke, fumes, vapor, soot, acids, alkalis, silica, metals, chemicals, lead, lead compounds or materials containing lead, radon, asbestos, mold, odors, noise, oil or oil products, any electric or magnetic or electromagnetic field of any frequency, and any compounds or materials or waste that contains any of the foregoing properties, characteristics or like substances. Waste also includes, but is not limited to, materials to be reclaimed, reconditioned or recycled.

Related Wrongful Acts means any **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, transaction, event or cause or series of causally connected facts, circumstances, situations, transactions, events or causes.

Subsidiary means, subject to paragraph E. of Section VI., General Conditions, any corporation, partnership, or limited liability partnership or limited liability company of which the **Named Insured** directly or indirectly owns more than 50%, and only while it owns more than 50%, of the issued and outstanding voting securities or interests representing the right to select a majority of such entity's directors.

Wrongful Act means any actual or alleged breach of duty, negligent act, error, omission, misstatement, misleading statement or **Personal injury** by or on behalf of the **Insured** solely in the performance of, or failure to perform, **Professional Services**.

V. EXCLUSIONS

This policy does not apply to any **Claim** based upon or arising out of:

1. a dishonest, intentional, fraudulent, criminal or malicious act or omission or any intentional or knowing violation of law by any **Insured**. However, the **Insurer** will provide the **Insured** with a defense of such **Claim** and pay **Defense Expenses** for any such **Claim** until there is a judgment, final adjudication or adverse admission by an **Insured** or a finding of fact against an **Insured** as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for **Defense Expenses** incurred prior thereto. This policy also shall not cover any **Damages** involving facts with respect to which any **Insured** pleads guilty or no contest ("nolo contendere") or has entered into a deferred prosecution agreement, and the **Insured** shall reimburse the **Insurer** for any **Defense Costs** that are incurred prior to the time of such guilty plea, nolo contendere or deferred prosecution agreement. In providing a defense to an **Insured**, the **Insurer** will not waive any of its rights under this policy, nor shall it be estopped from asserting such rights;
2.
 - (a) physical injury, sickness, disease or the death of any person including mental anguish or emotional distress resulting therefrom, or
 - (b) physical injury to, or destruction of any tangible property, including any resulting loss of use thereof;
3.
 - (a) the actual or alleged or threatened emission, discharge, dispersal, seepage, release or escape of **Pollutants**; or
 - (b) any injury, damage, payment, costs or expense incurred as a result of testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **Pollutants**; or
 - (c) any nuclear reaction, nuclear radiation, radioactive contamination, radioactive substance or the hazardous properties of nuclear material;
4. any actual or alleged violation of:
 - (a) the Employee Retirement Income Security Act of 1974;
 - (b) the Securities Act of 1933 and the Securities Exchange Act of 1934;
 - (c) any state Blue Sky or securities laws;
 - (d) any state Workers' Compensation law or act;

- (e) the Racketeer Influenced and Corrupt Organizations Act;
 - (f) the Interstate Commerce Act, the Sherman Anti-Trust Act, the Clayton Act, the Robinson Patman Act , the Cellar-Kefauver Act, the Competition Act, and the Federal Trade Commission Act; and any similar federal, state or local law, rule or regulation concerning restraint of trade, price fixing, conspiracy, unfair competition or anti-trust activities or anti competitive conduct;
 - (g) the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act and any social security act or law and any and all other similar provisions of any state, federal or local common or statutory law involving payroll practices, wage and hour policies and practices or payment of wages, overtime or vacation pay, or
 - (h) any rules, regulations or amendments pertaining to or arising in connection with the Acts and laws identified in (a) through (g) above, or any similar federal, state or local law, rule or regulation, including any *Claim* based upon common law principles of liability
5. any actual or alleged (a) false, deceptive or unfair trade practice, violation of consumer protection laws or false, deceptive or misleading trade practices (b) infringement or misappropriation of any intellectual property right, including but not limited to, any actual or alleged infringement of service mark, title , patent, design, copyright, trademark, trade dress or misappropriation of trade secret(s), or plagiarism, piracy or misappropriation of ideas.
 6. employment, hiring or workplace practices or acts including but not limited to, employer-employee relations, workplace or sexual harassment, or any actual or alleged discrimination of any kind, including but not limited to discrimination based on race, skin color, creed, religion, ethnic background, national origin, age, physical or mental handicap, disability, sex, sexual orientation, disability, pregnancy, political affiliation or any other protected class, whether such *Claim* is brought by an employee, applicant for employment, independent contractor, vender or customer of the *Insured*;
 7. liability of others assumed by an *Insured* under any contract or agreement, unless such liability would have attached to the *Insured* even in the absence of such contract or agreement;
 8. actual or alleged *Wrongful Acts* asserted (a) by or on behalf of one or more *Insureds* against any other *Insured*; (b) by or on behalf of an enterprise that is owned, managed or operated directly or indirectly in whole or in part by an *Insured*; or (c) by or on behalf of any independent contractor supplying materials or services to the *Insured*;
 9. *Professional Services* performed or which should have been performed for any person or entity, if at the time of any *Wrongful Act* giving rise to such *Claim*:
 - (a) any *Insured* controlled, owned, operated or managed such person or entity; or
 - (b) any *Insured* was an owner, partner, member, director, officer or employee of such person or entity;
 10. an *Insured's* actual or alleged breach of (a) any express warranty, guarantee or contract; or (b) any agreement to refund fees or other compensation, repurchase goods or materials, or indemnify any person or entity;
 11. an *Insured's* (a) delay in delivery or performance, or failure to deliver or perform, within an agreed period of time; (b) dispute with a client or customer regarding fees, charges, over-charges or cost over-runs; (c) dispute with a client or customer regarding fee collection actions; or (d) costs to correct or re-perform *Professional Services*;
 12. the gaining of any personal profit or advantage to which any *Insured* is not legally entitled;
 13. *Professional Services* performed, or which should have been performed, in whole or in part, on or prior to the *Prior Acts Date* stated in Item 7. of the Declarations;
 14. *Wrongful Acts* or *Related Wrongful Acts* which have been the subject of any notice given under any prior policy of which this policy is a renewal or replacement, or which this policy may succeed in time;
 15. any facts or circumstances of which any *Insured* had knowledge as of the effective date of this policy and which a reasonable person would suppose might give rise to a *Claim* that might fall within the scope of the coverage provided under this policy;
 16. *Professional Services* performed by a *Subsidiary*, in whole or in part, prior to it becoming a *Subsidiary* or after such entity ceased to be a *Subsidiary*;

17. (a) any misuse or unauthorized use or disclosure of confidential or proprietary data or of personally identifiable information; or
(b) any actual or alleged failure to inform customers or clients of any security breach which has impacted or may impact the confidential, proprietary or personally identifiable information of a customer or client;
18. (a) any prior or pending litigation or administrative or regulatory proceeding, demand letter, or formal or informal government investigation or inquiry filed or pending prior to the effective date of the first policy issued by the *Insurer* to the *Named Insured* of which this policy is an uninterrupted successor or renewal; or
(b) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter, or formal or informal governmental investigation or inquiry; or
(c) any notice of circumstances or *Claim* that has been given to any insurer under any other policy or disclosed in any insurance application.

VI. GENERAL CONDITIONS

A. Notice of *Claim* or Circumstance

1. The *Insureds* shall, as a condition precedent to the obligations of the *Insurer* under this policy, give written notice of a *Claim* as soon as practicable, but in no event later than thirty days after the expiration of the *Policy Period*. In the event a *Claim* is made during the Extended Reporting Period, if purchased, the *Insureds* shall, as a condition precedent to the obligations of the *Insurer* under this policy, give written notice of such *Claim* as soon as practicable, but in no event later than the expiration of the Extended Reporting Period.
2. If during the *Policy Period* or the Extended Reporting Period, if purchased, the *Insured* becomes aware of any facts or Circumstances that may reasonably be expected to give rise to a *Claim*, and written notice is given to the *Insurer* in accordance with paragraphs 1. and 3. of this Section A. of such facts or circumstances, as well as the reasons for anticipating such a *Claim*, with specific information as to the *Wrongful Act*, the likely resultant damage, and the dates and parties involved, then any *Claim* arising out of such specific facts or circumstances that is subsequently made against the *Insureds* and reported to the *Insurer* shall be deemed first made during the *Policy Period* as of the date of such notice.
3. Notice of a *Claim* or circumstances to the *Insurer* shall be given in writing to:

Crum & Forster
Claims Department
305 Madison Avenue
Morristown, New Jersey 07962

B. Defense and Settlement

1. The *Insurer* shall have the right and the duty to defend any *Claim* regardless of whether the allegations are groundless, false, or fraudulent. In undertaking this right and duty, the *Insurer* expressly retains the right to select defense counsel even when the *Insurer* reserves its rights on issues concerning the applicability of coverage under this policy. The *Insureds* shall pay any *Defense Expenses* within the applicable Deductible shown in Item 4. of the Declarations. The *Insurer's* right and duty to defend any *Claim* and pay *Defense Expenses* shall terminate upon the exhaustion of the Limit of Liability, whereupon the *Insurer* shall have no further obligation or liability to defend the *Insured* or to pay *Defense Expenses*, judgments or settlements. The *Insurer* may make any investigation it deems necessary and may, with the *Insured's* consent, such consent not to be unreasonably withheld, make any settlement of any *Claim* it deems expedient. If the *Insured* withholds consent of such settlement, the *Insurer's* liability for all *Damages* on account of such *Claim* shall not exceed the amount for which the *Insurer* could have settled such *Claim*, inclusive of *Defense Expenses*, incurred as of the date such settlement was proposed to the *Insured*.
2. The *Insureds* and those acting on their behalf shall not admit liability, consent to any judgment, incur any *Defense Expenses* or agree to any settlement without the *Insurer's* written consent, such consent not to be unreasonably withheld. The *Insureds* agree that they shall not knowingly take any action that in any way increases *Damages* or *Defense Expenses* under this policy. Coverage afforded by this policy shall not apply to any *Damages* sustained as a result of any admission of liability or consent to any judgment or agreement to settle, without or prior to the *Insurer's* written consent.

3. The *Insureds* shall provide the *Insurer* with such information, assistance, and cooperation as the *Insurer* and its counsel may reasonably request with respect to the defense and settlement of any *Claim*.

C. **Allocation of *Damages* and *Defense Expenses***

In the event both *Damages* and *Defense Expenses* for which coverage afforded by this policy may apply and uninsured damages and defense expenses not covered by this policy are incurred, either because a *Claim* against an *Insured* includes both insured and uninsured matters or, because a *Claim* is made against both an *Insured* and others that are not insured, the *Insured* and the *Insurer* agree to use their best efforts to determine a fair and proper allocation of insured *Damages* and *Defense Expenses* and uninsured damages and defense expenses based upon the relative legal and financial exposures presented. In the event that an agreement as to the allocation of covered and non-covered *Damages*, and *Defense Expenses* to be advanced, under this policy cannot be agreed to, then the *Insurer* shall advance such *Defense Expenses* as the *Insurer* determines to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

D. **Cancellation and Nonrenewal**

1. The *Named Insured* may cancel this policy at any time prior to the expiration date of the *Policy Period* by mailing prior written notice to the *Insurer* or by surrender of this policy to the *Insurer* or its authorized agent. If the *Named Insured* shall cancel this policy, the *Insurer* shall return 90% of the unearned portion of the premium.

2. The *Insurer* may only cancel this policy for nonpayment of premium. This policy may be canceled by or on behalf of the *Insurer* by delivering to the *Named Insured*, or by mailing to the *Named Insured*, at the address shown in Item 1. of the Declarations, written notice of cancellation at least 10 days before the effective date of cancellation. The mailing of such notice shall be sufficient proof of notice and the effective date of cancellation stated in such notice shall become the expiration date of the *Policy Period*. If the *Insurer* cancels this policy for nonpayment of premium, the *Insurer* shall credit the *Insured* 90% of the unearned portion of the premium. Payment or tender of any unearned premium by the *Insurer* shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

3. This policy may be nonrenewed by the *Insurer* by delivering to the *Named Insured* or by mailing to the *Named Insured* at the address shown in Item 1. of the Declarations, written notice of nonrenewal at least thirty days prior to the expiration date of the *Policy Period*. The mailing of such notice shall be sufficient proof of notice.

E. **Treatment of *New Professional Services*, *New Subsidiaries*, and Mergers and Acquisitions**

1. If during the *Policy Period*, the *Named Insured* or any *Subsidiary* shall provide *New Professional Services*, or

2. If during the *Policy Period*, the *Named Insured* or any *Subsidiary* merges with another entity, or acquires or creates a new *Subsidiary*, which:

- (a) represents more than 20% of the total assets of the *Named Insured* as of the effective date of this policy, or
- (b) increases the number of employees by more than 20% of the number of employees immediately prior to the merger with or acquisition or creation of, such *Subsidiary*, or
- (c) provides *New Professional Services*, or
- (d) increases the *Named Insured's* revenues by more than 25% of the revenue immediately prior to the merger with or acquisition or creation of such *Subsidiary*,

then no coverage will be afforded under this policy for any *Insured* in respect of such *New Professional Services* and no coverage will be afforded in respect of *Professional Services* performed or which should have been performed subsequent to the effective date of such merger, acquisition or creation of such *Subsidiary*.

3. However, the foregoing paragraphs 1. and 2. shall not apply if the *Named Insured* provides the *Insurer* with written notice at least thirty days prior to said merger, acquisition or creation of such *Subsidiary*, or the offering of such *New Professional Services*, and receives the *Insurer's* written consent to extend coverage to such merged company, acquired company or new *Subsidiary* or *New Professional Services* and agrees to provide information regarding same and pays any additional premium required by the *Insurer*.

F. Effect of Certain Events

If, during the *Policy Period*, the *Named Insured* merges or consolidates with another entity such that the *Named Insured* is not the surviving entity or, is acquired by another entity or, sells substantially all of its assets to any other entity, person, or group of persons or entities, whether occurring as the result of a single transaction or as the result of a series of transactions, then:

1. coverage under this policy ceases as to any *Professional Services* performed or which should have been performed subsequent to the effective date of such acquisition or sale;
2. however, this policy remains in force until the expiration date and coverage continues, subject to all the terms and conditions of this policy, but only with respect to *Professional Services* performed, or which should have been performed, in whole, prior to the effective date of such acquisition or sale, but subsequent to the *Prior Acts Date*; and
3. the premium becomes fully earned by the *Insurer*.

The *Named Insured* shall give the *Insurer* written notice of any such event as soon as practicable, but in no event later than thirty days after the effective date of the acquisition. Failure to notify the *Insurer* of any such event shall not serve to amend or alter the conditions outlined in 1., 2. or 3. above.

G. Action Against Insurer

1. No action shall be taken against the *Insurer* unless, as a condition precedent thereto, the *Insureds* shall have fully complied with all of the terms and conditions of this policy, nor until the amount of the *Insureds*' obligation to pay *Damages* for any *Claim* shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant, and the *Insurer*.

2. Nothing contained herein shall give any person or entity any right to join the *Insurer* as a party to any *Claim* against the *Insureds* to determine their liability, nor shall the *Insurer* be impleaded by the *Insureds* or their legal representative in any *Claim*.

H. Subrogation

In the event of any payment under this policy, the *Insurer* shall be subrogated to the extent of such payment to all *Insureds*' rights of recovery therefrom against any person or entity, and the *Insureds* shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights to enable the *Insurer* to effectively bring suit in their name, and shall provide all other assistance and cooperation which the *Insurer* may reasonably require.

I. Representations

In granting coverage to the *Insureds*, it is agreed that the *Insurer* has relied upon the representations and statements contained in the application for this policy (and all such previous applications submitted, or made part of any previous policy which this policy may succeed in time) including materials submitted therewith, as being accurate and complete and shall be the basis of the contract and shall become part of such policy as if physically attached. Such representations and statements are deemed to be material to the risk assumed by the *Insurer*.

J. Other Insurance

All *Damages and Defense Expenses* payable under this policy shall be in excess of and shall not contribute with other existing insurance including, but not limited to, any insurance under which there is a duty to defend, regardless of whether any *Damages* or *Defense Expenses* are collectible or recoverable under such other insurance, unless such other insurance is written specifically excess of this policy. This policy shall not be subject to the terms or conditions of any other insurance.

K. Authorization

The *Named Insured* shall act on behalf of the *Insureds* with respect to the receiving of notices and return premiums from the *Insurer*.

L. **Headings and Titles**

The headings, sub-headings, and titles of this policy are for descriptive and reference purposes only and are not to be deemed in any way to limit, modify, or affect the terms and conditions of this policy.

M. **Assignment of Interest**

This policy and any and all rights hereunder are not assignable without the written consent of the *Insurer*.

N. **Changes**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the *Insurer* shall not effect a waiver or a change in any part of this policy or estop the *Insurer* from asserting any right under the terms and conditions of this policy, nor shall any terms or conditions be waived or changed except by written endorsement issued to form a part of this policy.

O. **Territory**

This policy applies to a *Professional Services* taking place anywhere in the world provided that suit is brought and maintained against the *Insured* within the United States of America, its territories or possessions, Puerto Rico or Canada.

P. **Named Insured Sole Agent**

The *Named Insured* will be the sole agent and will be authorized to act on behalf of all *Insureds* for the purpose of giving or receiving any notices, any amendments to or cancellation of this policy, for the completing of any applications and the making of any statements, representations and warranties for the policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy, including the purchase of any Extended Reporting Period.

SPECIAL AGENT