



Media Liability Insurance Coverage

- Darwin National Assurance Company
 Darwin Select Insurance Company

Policy Number:

SUBJECT TO ITS TERMS, THIS IS A CLAIMS-MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. DEFENSE EXPENSES WILL REDUCE AND MAY EXHAUST THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

Item 1. Name and Mailing Address of Named Insured:

Item 2. Policy Period:

- (a) Inception Date:
(b) Expiration Date:

At 12:01AM Standard Time at the Mailing Address Shown Above

Item 3. Limits of Liability:

- (a) Insuring Agreement I(A) - Communications, Personal Injury and Content Error and Omissions Liability:
\$ Insurer's Maximum Limit of Liability for all Loss, including Defense Expenses, from each Claim for which coverage is provided pursuant to Insuring Agreement I(A);
- (b) Insuring Agreement I(B) - Governmental Liability:
\$ Insurer's Maximum Limit of Liability for all Defense Expenses, from all Governmental Claims;
- (c) Supplemental Payment II(A) - Offensive Declaratory Judgment Actions:
\$ Insurer's Maximum Limit of Liability for all legal expenses and fees incurred pursuant to Supplemental Payment Section II(A) of the Policy;
- (d) Policy Aggregate:
\$ Insurer's Maximum Aggregate Limit of Liability for all Loss, including Defense Expenses, in the aggregate from all Claims, including Governmental Claims, and for all legal expenses and fees incurred pursuant to Supplemental Payment Section II(A) of the Policy.

Item 4. Retention:

- (a) \$ each and every Claim for which coverage is provided pursuant to Insuring Agreement I(A);
- (b) \$ each and every Governmental Claim for which coverage is provided pursuant to Insuring Agreement I(B);
- (c) \$ each and every action for declaratory relief for which coverage is provided pursuant to Supplemental Payment Section II(A).

Item 5. Insured's Media:

Item 6. Notices Required to be Given to the Insurer Must Be Addressed to:

Darwin Professional Underwriters, Inc.
9 Farm Springs Road
Farmington, CT 06032

Item 7. Premium:

Total Premium: \$

Item 8. Retroactive Date:

Item 9. Extended Reporting Period Option(s):

months, for an Additional Premium of % of the Premium set forth in Item 7.

Item 10. Endorsements Attached at Issuance:

- 1.
- 2.
- 3.
- 4.

THIS POLICY CONSISTS OF THESE DECLARATIONS, THE POLICY FORM, THE APPLICATION AND ALL ENDORSEMENTS, AND REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE INSURED RELATING TO THIS INSURANCE.

In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers.



THIS IS A CLAIMS-MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. DEFENSE EXPENSES WILL REDUCE AND MAY EXHAUST THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, in reliance on the Application, and subject to all of the terms, conditions and limitations of, and any endorsements to this Policy, the Insurer and the Insured agree as follows:

I. INSURING AGREEMENTS

(A) Communications, Personal Injury and Content Error and Omissions Liability

The **Insurer** will pay on behalf of the **Insured**, **Loss**, including **Defense Expenses**, in excess of the applicable Retention and within the Limit of Liability set forth in Item 3(a) of the Declarations, which the **Insured** is legally required to pay to third parties because of liability imposed by law or **Assumed Under Contract** as a result of **Claims**, other than **Governmental Claims**, first made against the **Insured** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** arising from **Occurrences** committed by the **Insured**, provided that such **Wrongful Acts** take place on or after the **Retroactive Date**.

(B) Governmental Liability

The **Insurer** will pay on behalf of the **Insured**, **Defense Expenses**, in excess of the applicable Retention and within the Limit of Liability set forth in ITEM 3(b) of the Declarations, which the **Insured** is legally required to pay as a result of **Governmental Claims** first made against the **Insured** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** arising from **Occurrences** committed by the **Insured**, provided that such **Wrongful Acts** take place on or after the **Retroactive Date**.

II. SUPPLEMENTAL PAYMENTS

(A) Offensive Declaratory Judgment Actions

The **Insurer** will pay on behalf of the **Insured**, reasonable legal expenses and fees incurred by or on behalf of the **Insured** in the pursuit of an action for declaratory relief against a third party, initiated during the **Policy Period**, in excess of the applicable Retention and within the Limit of Liability set forth in ITEM 3(c) of the Declarations, which the **Insured** is legally required to pay, provided that:

- (1) it is mutually agreed upon by the **Insured** and the **Insurer** that litigation against the **Insured** is imminent;
- (2) such potential litigation involves a **Wrongful Act** arising from **Occurrence**, provided that the **Wrongful Act** takes place on or after the **Retroactive Date**, which is reasonably likely to result in a **Claim** for which coverage is provided under this Policy;
- (3) the action for declaratory relief is reasonably likely to prevent, avoid or mitigate such **Claim**; and

- (4) such legal fees and expenses are authorized or approved in advance in writing by the **Insurer**.

Provided that no coverage shall be available pursuant to this Section II(A) for the **Insured's** overhead expenses or any salaries, wages, fees, or benefits of any natural person **Insureds**.

III. DEFINITIONS

- (A) “**Additional Insured**” means an individual or entity added to the policy by Endorsement as an **Insured**, including but not limited to the following:
- (1) an individual or entity providing **Matter** or services for or on behalf of the **Named Insured** for the **Insured's Media**; or
 - (2) an individual or entity to which the **Named Insured** is furnishing **Insured's Media**, but solely with respect to the **Insured's Media**.
- (B) “**Advertising**” means advertising, publicity, press releases or promotional materials or public appearances on behalf of the **Insured** or for others, but does not include one-on-one written or oral communications, or the redemption of lotteries, sweepstakes, coupons, contests or games of chance, including the over or under-redemption of any of the above.
- (C) “**Application**” means:
- (1) the application submitted to the **Insurer**; or
 - (2) any application submitted to any competitor of the **Insurer**, which is provided to the **Insurer** for the purposes of procuring coverage hereunder, and which shall be treated as if it were submitted directly to the **Insurer**;
- any and all materials and information submitted to the **Insurer** in connection with any such application, and all publicly available material promulgated by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of the Policy, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this Policy, as if physically attached.
- (D) “**Assumed Under Contract**” means liability assumed by the **Insured** in any written, oral or implied hold harmless or indemnity agreement with any party, but only with respect to **Matter** provided by the **Insured** and for the types of **Wrongful Acts** arising from **Occurrences** covered by this Policy; provided, however, that such agreement is entered into and effective prior to the time of the **Wrongful Act**.
- (E) “**Bodily Injury**” means bodily injury, sickness and disease, including death.
- (F) “**Claim**” means:
- (1) any written demand for monetary, non-monetary, or injunctive relief;
 - (2) any written request to toll or waive any statute of limitations;
 - (3) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding; and
 - (4) any **Governmental Claim**.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

(G) **“Content Wrongful Acts”** means any negligent act, error or omission in connection with the content of **Matter** uttered or disseminated in the **Insured’s Media**, including but not limited to a misrepresentation, misstatement or misleading statement.

(H) **“Defense Expenses”** means the following, when authorized or approved by the **Insurer**; reasonable legal fees and expenses incurred by or on behalf of the **Insured** in the investigation, defense, settlement or appeal of a **Claim**; reasonable legal fees to respond to a retraction or correction request; and, the cost of any bond or appeal bond required in any civil suit, provided that the **Insurer** shall not be obligated to apply for or furnish any such bond.

Defense Expenses will not include the **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of any natural person **Insureds**.

(I) **“Domestic Partner”** shall have the meaning prescribed under applicable state law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two (2) years or more;
- (2) are not blood relatives and are not married or in a domestic partnership with someone else; and
- (3) are mentally competent, at least 18 years of age and registered as domestic partners in a local registry, if one exists.

(J) **“Employee”** means any W-2 wage-earning full-time or part-time employee of the **Named Insured** or any **Subsidiary**.

(K) **“Governmental Claim”** means:

- (1) a written demand for monetary, non-monetary, or injunctive relief;
- (2) a written request to toll or waive a statute of limitations;
- (3) any civil proceeding in a court of law or equity, including any appeal therefrom; or
- (4) an administrative proceeding or formal investigation initiated by an order of investigation, notice of charges or similar document;

when brought by the Federal Trade Commission, the Federal Communication Commission, or any other federal, state, municipal or quasi-governmental authority, whether in its own right, on behalf of an individual or entity, or by an individual or entity on the agency’s or authority’s behalf.

A **Governmental Claim** shall not include general information gathering or inquiries, investigation of routine complaints, or routine compliance activities by administrative or regulatory agencies.

(L) **“Independent Contractor”** means any individual or business entity providing **Matter** or services to the **Insured** pursuant to an express or implied contract or agreement.

(M) **“Insured”** means:

- (1) the **Named Insured**;
- (2) any **Subsidiary**;
- (3) any past, present, or future director, officer, trustee, shareholder, principal, owner, partner, member, manager, or **Employee** of the **Named Insured** or any **Subsidiary**, but only while acting within the scope of their duties for the **Named Insured** or any **Subsidiary**;

- (4) at the discretion of the **Named Insured**, any agent leased or temporary employee, volunteer or **Independent Contractor** providing **Matter** or services for the **Insured's Media**, including but not limited to freelancers, correspondents, photographers and stringers; but only with respect to **Matter** provided by such individuals to, or services performed for or on behalf of, the **Named Insured** or any **Subsidiary**; and
- (5) any **Additional Insured**.

In the event of the death, incapacity, or bankruptcy of a natural person **Insured**, any **Claim** against the estate, heirs, legal representatives, or assigns of such natural person **Insured** for a **Wrongful Act** of such natural person **Insured** will be deemed to be a **Claim** against such natural person **Insured**.

- (N) "**Insured's Media**" means the media entities and activities, existing on the Effective Date of this Policy, set forth in Item 5 of the Declarations or in an Endorsement to this Policy, including any electronic, incidental, supplemental or special editions relating thereto, and, any other media entities or activities if established or acquired subsequent to the Effective Date of this Policy which are reported and approved pursuant to Condition (H).
- (O) "**Insurer**" means the company identified on the Declarations.
- (P) "**Loss**" means **Defense Expenses**, judgments, settlements and all forms of monetary damages as a result of a **Claim** covered by this Policy, including actual damages, statutory damages, punitive, exemplary or multiplied damages, pre-judgment and post-judgment interest and plaintiff's attorneys' fees and costs included as part of a judgment. However, **Loss** shall not include:
 - (1) taxes;
 - (2) civil or criminal fines, penalties or sanctions (other than punitive, exemplary or multiplied damages); or
 - (3) the cost of recall, correction, reproduction, redistribution or reprinting of **Matter**, and related expenses incurred by the **Insured**, or any indemnitee.

With regard to the insurability of punitive, exemplary or multiplied damages, this Policy shall apply to the fullest extent permitted by law. Where an **Insured** determines, based on written opinion of counsel, that punitive, exemplary or multiplied damages are insurable under any applicable law, the **Insurer** shall not challenge the **Insured's** determination of insurability.

- (Q) "**Matter**" means any communication, regardless of its nature or form, including but not limited to advertising, merchandising (including promotional goods and characters), art, creative expression, data, entertainment, film, facts, fiction, graphics, information, literary composition, music, news, photographs, pictures, opinions, sound recordings and video.
- (R) "**Media Wrongful Acts**" means acts, errors or omissions by an **Insured** in connection with the **Insured's Media**, other than **Content Wrongful Acts**, including but not limited to the following:
 - (1) defamation, however styled in a **Claim**, involving disparagement or harm to the character, feelings or reputation of any person or organization, including libel, slander, product disparagement or trade libel;
 - (2) invasion of or interference with the right of privacy or publicity, however styled in a **Claim**, including eavesdropping, intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
 - (3) negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
 - (4) trespass, wrongful entry or eviction;

- (5) false arrest or imprisonment, abuse of process, detention or malicious prosecution;
- (6) harassment or stalking;
- (7) violations of the Fourth Amendment to the U.S. Constitution or other equivalent state statute preventing unreasonable searches and seizures relating to newsgathering;
- (8) breach of confidentiality of any oral, written or implied agreement, however styled in a **Claim**, arising from the failure to maintain the confidentiality of a source or the materials furnished by a source, or from the failure to portray a source or subject in a certain manner or light;
- (9) infringement of copyright, plagiarism, piracy and misappropriation of ideas under implied contract or other misappropriation of ideas or information;
- (10) infringement or dilution of trademark, title, slogan, trade name, trade dress, service mark or service name;
- (11) unfair competition, but only when alleged in a **Claim** covered under one or more of subparts (1) – (10) above;
- (12) deceptive trade practices or fraud, whether statutory, regulatory or at common law, but only when alleged in a **Claim** covered under one or more of subparts (1) – (11) above and when the acts giving rise to such causes of action had been previously approved by the **Insured's** counsel or duly authorized supervisor;
- (13) conspiracy, but only when alleged in a **Claim** covered under one or more subparts (1) – (11) above;
- (14) breach of an indemnification or hold harmless agreement, but only when alleged in a **Claim** covered under one or more of subparts (1) – (11) above;
- (15) negligent supervision of an **Employee**, but only when alleged in a **Claim** covered under one or more of subparts (1) – (11) above;
- (16) an act or omission resulting in a contempt of court order, but only if the **Insured's** counsel had previously authorized such act or omission based upon a good faith belief that the court order violated the First Amendment to the United States Constitution or any provision of a State Constitution protecting freedom of speech and press or that the act or omission was not a violation of such court order; or
- (17) spoliation of evidence arising from the innocent destruction and/or recycling of the **Insured's Matter**.

(S) “**Named Insured**” means the entity named in ITEM 1 of the Declarations.

(T) “**Occurrence**” means:

- (1) the following activities by an **Insured**:
 - (a) the gathering, creation, acquisition, investigation and compilation of **Matter**;
 - (b) **Advertising** in or directly relating to the **Insured's Media**; or
 - (c) an editorial decision to deny or limit access to the **Insured's Media** to prevent the utterance or dissemination of offensive **Matter**.
- (2) the following activities by an **Insured** or by others with the permission of the **Insured**:
 - (a) any broadcast, transmission, utterance, telecast, cablecast, serialization or production of **Matter**;
 - (b) any publication or republication of **Matter** or incidental publications relating thereto;
 - (c) any online dissemination of **Matter**; or
 - (d) the release, distribution, syndication, licensing, sale, lease or exhibition of **Matter**.

- (U) **"Policy Period"** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (V) **"Property Damage"** means:
 - (1) physical harm to, or destruction of, tangible or intangible property, including its loss of use; or
 - (2) loss of use of tangible or intangible property that has not been otherwise physically harmed or destroyed.
- (W) **"Related Claims,"** means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.
- (X) **"Retroactive Date"** means the date set forth in ITEM 8 of the Declarations.
- (Y) **"Subsidiary"** means any entity in which the **Named Insured** and/or one or more of its **Subsidiaries** owns more than fifty percent (50%) of its issued or outstanding voting securities, partnership interest or member units; provided that such entity was created or acquired by the **Named Insured** or one or more of its **Subsidiaries** on or before the Inception Date in ITEM 2(a) of the Declarations, and only with respect to **Wrongful Acts** taking place while such entity is a **Subsidiary**.
- (Z) **"Wrongful Act"** means any **Media Wrongful Act** or **Content Wrongful Act**.

IV. EXCLUSIONS

- (A) No coverage will be available under this Policy for **Loss** or **Defense Expenses**, from any **Claim**:
 - (1) for violation of a criminal statute, which shall have been determined by judge, jury or legal admission; except this Exclusion shall not apply if the **Insured's** counsel had previously authorized such act or omission based upon a good faith belief that the criminal statute violated the First Amendment to the United States Constitution or any provision of a State Constitution protecting freedom of speech and press or a good faith belief that the act or omission was not a violation of such criminal statute.

With respect to this Exclusion (A)(1), no knowledge possessed by or conduct of any natural person **Insured** shall be imputed to any other natural person **Insured** for coverage purposes under the Policy; and, only knowledge possessed by or conduct of an officer, director, partner, general counsel or risk manager of an **Insured** entity, or any person in a functionally equivalent position within an **Insured** entity, shall be imputed to an **Insured** entity.
 - (2) made by ASCAP, SESAC, BMI, RIAA or other music licensing entity on their behalf or for others and arising from the **Insured's** failure to procure or maintain requisite licenses or payment of royalties.
- (B) No coverage will be available under this Policy for **Loss** or **Defense Expenses**, from any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) actual or alleged breach of any express or implied contract, agreement or warranty or any fee, billing or charge by an **Insured** or the **Insured's** alleged failure to pay royalties or other

payments or to account for same; but this Exclusion shall not apply to liability **Assumed Under Contract** nor for **Claims** covered under Section III. Definition R(8);

- (2) ownership disputes relating to **Matter** or services supplied to the **Insured** by any past, present or future **Insured**, joint venturer or **Independent Contractor**;
- (3) usual and ordinary business activities and transactions, including **Claims** made by current or former **Employees**, applicants for employment or any of their spouses, heirs, executors, administrators or legal representatives, that do not directly arise from the content of **Matter** gathered for, or uttered or disseminated in, the **Insured's Media**;
- (4) actual or alleged infringement of patent or inducement to infringe a patent;
- (5) actual or alleged intentionally false, fraudulent, deceptive or misleading **Advertising**, or for unfair competition arising therefrom, but only with respect to the **Insured's** own products or services;
- (6) actual or alleged **Bodily Injury or Property Damage**; provided however that this Exclusion shall not apply to:
 - (a) emotional distress; or
 - (b) **Bodily Injury or Property Damage** arising out of the content of **Matter** uttered or disseminated in the **Insured's Media**, where the claimant reasonably relied on such content;
- (7) actual or alleged violation of a statute, regulation or common law that prohibits antitrust activities, price fixing, price discrimination, monopolization, restraint of trade or any unfair competition or conspiracy relating to any of these causes of action;
- (8) actual or alleged violation of a statute, regulation or common law that governs the offer, sale or purchase of securities or commodities, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, any state Blue Sky" law or any amendment to the foregoing;
- (9) actual or alleged unauthorized collection, use or dissemination of internet user information through web cookies or other online profiling processes by or on behalf of the **Insured** or for unlawful access to or invasion of any computer software, operating system or network, electronic mail or voice mail system by or on behalf of the **Insured**;
- (10) a **Wrongful Act** which has been the subject of any notice to an **Insured** of a **Claim** or a potential **Claim** prior to the Inception Date of the Policy;
- (11) the transmission or dissemination of unsolicited commercial electronic mail or facsimiles; or
- (12) any **Governmental Claim**, except as provided in Insuring Agreement (B), Governmental Liability.

V. CONDITIONS

(A) Limits of Liability:

Regardless of the number of **Claims** brought under this Policy, the number of persons or entities included within the definition of **Insured**, or the number of claimants, the **Insurer's** liability is limited as follows:

- (1) The maximum Limit of Liability of the **Insurer** for all **Loss**, including **Defense Expenses**, in excess of the Retention set forth in ITEM 4(a) of the Declarations, resulting from each **Claim**, other than a **Governmental Claim**, for which this Policy provides coverage, shall be the amount set forth in ITEM 3(a) of the Declarations, which amount shall be part of, and not in addition to, the aggregate Limit of Liability set forth in ITEM 3(d) of the Declarations;
- (2) The maximum aggregate Limit of Liability of the **Insurer** for all **Defense Expenses** in excess of the Retention set forth in ITEM 4(b) of the Declarations, resulting from all **Governmental Claims** for which this Policy provides coverage, shall be the amount set forth in ITEM 3(b) of the Declarations, which amount shall be part of, and not in addition to, the aggregate Limit of Liability set forth in ITEM 3(d) of the Declarations;
- (3) The maximum Limit of Liability of the **Insurer** for all legal fees and expenses incurred pursuant to Section II(A) of this Policy, in excess of the Retention set forth in ITEM 4(c) of the Declarations, shall be the amount set forth in ITEM 3(c) of the Declarations, which amount shall be part of, and not in addition to, the aggregate Limit of Liability set forth in ITEM 3(d) of the Declarations;
- (4) The maximum aggregate Limit of Liability of the **Insurer** for all **Loss**, including **Defense Expenses**, in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from all **Claims**, including **Governmental Claims**, for which this Policy provides coverage, and for all legal fees and expenses pursuant to Section II(A) of this Policy, shall be the amount set forth in ITEM 3(d) of the Declarations; or
- (5) **Defense Expenses** are part of, and not in addition to, the **Insurer's** Limit of Liability, and payment of **Defense Expenses** by the **Insurer** will reduce and may exhaust such Limit of Liability.

(B) Application of Retention:

The obligation of the **Insurer** to pay **Loss** or **Defense Expenses** will only be in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The Retention shall not reduce the Limit of Liability and shall apply separately to each and every **Claim**. The **Insurer** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of any Retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to do so, in which event the **Insured** agrees to repay the **Insurer** promptly upon demand any amounts so paid.

(C) Defense and Settlement of Claims; Cooperation:

(1) Option to Defend

With respect to each **Claim** for which coverage is afforded under this Policy, the **Insured** shall have the option to defend such **Claim** itself or to assign the duty to defend such **Claim** to the **Insurer**. The **Insured** must notify the **Insurer** of which option it has elected in writing within a reasonable time after such **Claim** is first made, but in no event later than ten (10) days from the

date on which a complaint or other legal process is served upon the **Insured**. Upon receipt of notice that it has been assigned the duty to defend, the **Insurer** shall have the duty to defend such **Claim** as part of and subject to the applicable Limit of Liability set forth in Item 3 of the Declarations. If no such notice is given within the time period specified, the **Insured** shall have the duty to defend the **Claim** itself, as part of and subject to the applicable Limit of Liability set forth in Item 3 of the Declarations.

If the **Insured** has elected or otherwise assumed the obligation to defend the **Claim** itself, the **Insured** may retain counsel from the list of Panel Counsel provided by the **Insurer** or may retain other qualified counsel with the **Insurer's** prior consent, which shall not be unreasonably withheld. The **Insurer** will, upon written request from the **Insured**, pay **Defense Expenses** for which this Policy provides coverage on a current basis. Otherwise, the **Insurer** shall pay **Loss** only on the final disposition of the **Claim**.

If the **Insured** has elected to assign the duty to defend a covered **Claim** to the **Insurer** pursuant to (C)(1) above, the **Insurer** shall retain counsel of its choice for the defense of such **Claim**.

(2) Cooperation

The **Insured** shall cooperate with the **Insurer** with respect to any covered **Claim** in accordance with the following:

- (a) if the **Insured** has elected the duty to defend itself in connection with a **Claim**:
 - (i) the **Insured** shall file responsive pleadings within the time required by law;
 - (ii) the **Insured** and its defense counsel shall comply with reasonable claim procedures established by the **Insurer**; and
 - (iii) the **Insurer**, at its own expense, shall have the right to associate with the **Insured** in the defense.
- (b) regardless of whether the **Insured** has elected to defend itself in connection with a **Claim** or assigned that duty to the **Insurer**:
 - (i) the **Insured** shall keep the **Insurer** advised of all developments and expenses and provide the **Insurer** with any documents, information, correspondence or pleadings reasonably requested by the **Insurer**;
 - (ii) the **Insured** shall attend hearings and trials, assist in securing and complying with discovery requests and procuring the attendance of witnesses;
 - (iii) at the **Insurer's** request, the **Insured** shall assist in protecting and enforcing any right of contribution or indemnity against any third person or organization who may be liable to the **Insured**; and
 - (iv) no **Insured** shall make any admissions of liability, but this shall not preclude the **Insured** from retracting or correcting **Matter**.

(3) Retraction or Correction

The **Insured** shall have discretion regarding the necessity to retract or correct **Matter** that has been uttered or disseminated in **Insured's Media**.

(4) Sources, Notes and Confidentiality

The duty to cooperate does not require the **Insured** to disclose the identity of a confidential source or materials furnished by a source or to produce a reporter's notes, recordings, tapes, out-takes or related materials in connection with a **Claim**.

(5) Settlement, Judgment and Appeal

The **Insured** may settle any **Claim** if the total amount of **Loss** and **Defense Expenses** is less than the remaining Retention without prior consent from the **Insurer**, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Insurer**. If, however, any combination of **Loss** and **Defense Expenses** exceeds the Retention, or a proposed settlement does not fully resolve the **Claim** with respect to all **Insureds** and the **Insurer**, then no offer to settle shall be made without prior consent from the **Insurer**, which shall not be unreasonably withheld. If the **Insured** and the **Insurer** disagree with respect to settlement, the following provisions shall apply:

(a) If the **Insured** is willing to accept the judgment of a trial or appellate court, and if the **Insurer** disagrees, the **Insurer** shall have the right to continue to defend the **Claim** or may appeal from the judgment. All **Defense Expenses** and **Loss** arising from any new trial or appellate action, as well as any increase in the judgment shall be paid by the **Insurer**, and any increase in the judgment shall not affect the Limit of Liability; or

(b) If the **Insurer** is willing to accept a settlement offer or judgment of a trial or appellate court and the **Insured** is not willing to accept such settlement offer or judgment, and if the judgment or settlement exceeds the **Insured's** remaining Retention, the **Insurer** and the **Insured** shall negotiate, mediate or submit to other means of dispute resolution as soon as practicable, with each party to bear its own expenses in connection therewith.

(6) The **Insurer** will have no obligation to pay or reimburse **Loss**, including **Defense Expenses**, or to pay or reimburse any legal fees and expenses pursuant to Section II(A) of this Policy, after the **Insurer's** applicable maximum aggregate Limit of Liability set forth in ITEM 3(c) of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the **Insurer's** maximum aggregate Limit of Liability is exhausted by the payment of **Loss**, including **Defense Expenses**, the entire premium will be deemed fully earned.

(D) **Other Insurance; Other Indemnification:**

(1) All **Loss** and **Defense Expenses** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.

(E) **Subrogation:**

In the event of payment of **Loss** or **Defense Expenses** under this Policy, the **Insurer** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The obligations of the **Insured** under this CONDITION (E) will survive the expiration or cancellation of the Policy.

(F) **Spouse and Domestic Partner Extension:**

The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to **Loss** and **Defense Expenses** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or **Domestic Partner** of a natural person **Insured**, but only if: (a) the **Claim** against such spouse or **Domestic Partner** results from a **Wrongful Act** actually or allegedly committed by the natural person **Insured**, to whom the spouse is married or with whom the **Domestic Partner** is residing; and (b) such natural person **Insured** and his or her spouse or **Domestic Partner** are represented by the same counsel in connection with such **Claim**.

(G) **Notice, Timing, and Interrelationship of Claims:**

(1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than thirty (30) days after the expiration date of the **Policy Period** or Extended Reporting Period, if purchased.

(2) If, during the **Policy Period**, the **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:

(a) gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and

(b) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

(3) All notices under CONDITION (G)(1) and (2) must be sent in writing or electronically, to the address set forth in ITEM 6 of the Declarations.

(4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (G)(2), whichever is earlier.

(H) **Mergers, Consolidations and Acquisitions:**

This Policy applies only to the **Insured's Media**, the **Insured** and any **Additional Insured** described on the Effective Date of this Policy in the Declarations or by Endorsement. The Policy shall extend to any newly created or acquired media entities or mergers, if reported in writing to the **Insurer** within ninety (90) days. Newly acquired or created media entities and mergers described above will be subject to underwriting review and approval by the **Insurer**, and any additional terms and conditions including payment of any additional premium that may be required by the **Insurer**.

(I) **Cancellation; No Obligation to Renew:**

- (1) This policy may be canceled by the **Insurer** by mailing to the **Named Insured**, written notice stating the reason(s) for cancellation and when, but not less than sixty (60) days thereafter, such cancellation shall be effective. Any earned premium will be calculated pro rata. If cancellation is for failure to pay premium when due, the **Insurer** shall give written notice when, but not less than ten (10) days thereafter, such cancellation shall be effective. The **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice of cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Named Insured** may cancel this Policy at any time by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, return premium will be in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation by the **Named Insured** is effective or as soon as practicable thereafter.
- (3) The **Insurer** will not be required to renew this Policy upon its expiration. If the **Insurer** elects not to renew this Policy, the **Insurer** will deliver or mail by first class, registered, or certified mail to the **Named Insured** at its last known address written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal. A copy of such notice shall be sent to the agent of record.

(J) **Extended Reporting Period:**

- (1) If either the **Insurer** or the **Named Insured** cancels, refuses or declines to renew this Policy for any reason other than non-payment of premium, and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase the Extended Reporting Period for the period of time and additional premium set forth in Item 9 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss from Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** which take place before the end of the **Policy Period**.
- (2) The Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be purchased if all premiums and retentions due under the Policy have been paid. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.

(K) **Representations:**

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that

such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

(L) **Severability:**

- (1) In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, the knowledge of one natural person **Insured** will not be imputed to any other natural person **Insured**, provided, however, that this Policy will be void:
 - (a) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and
 - (b) with respect to the **Named Insured** or any **Subsidiary**, if, and only if, the officer, director, partner, counsel, risk manager of the **Named Insured** or such **Subsidiary**, or the signor of the **Application** for this Policy, or any natural person holding a functionally equivalent position within the **Named Insured** or such **Subsidiary**, knew of such untruth, misrepresentation or omission.

(M) **No Action against the Insurer:**

- (1) No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant, and the **Insurer**.
- (2) No person or entity will have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Insurer** be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

(N) **Insolvency of Insured:**

The **Insurer** will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured**.

(O) **State Endorsements:**

State endorsement shall be added to this Policy to conform to statutory requirements or to address public policy concerns of the state where the Policy has been issued.

(P) **Premium:**

The **Named Insured** shall pay to the **Insurer** the premium stated in Item 7 of the Declarations. The premium may be subject to change during the Policy Period based upon additions or deletions of the **Insured's Media** or changes in the provisions of the Policy by Endorsement as agreed upon by the **Named Insured** and the **Insurer**.

(Q) **Territory:**

This Policy applies to **Wrongful Acts** committed, or to **Claims** brought, anywhere.

(R) **Authorization and Notices:**

The **Insureds** agree that the **Named Insured** will act on their behalf with respect to receiving any notices and return premiums from the **Insurer**.

(S) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms, conditions, and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(T) **Assignment:**

No assignment of interest under this Policy will bind the **Insurer** without its consent.

(U) **Entire Agreement:**

The **Insured** agrees that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of its agents relating to this insurance.

(V) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof, the **Insurer** has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page by a duly authorized representative of the **Insurer**.