

**I. INSURING AGREEMENT**

The Company will pay on behalf of the **Named Company**, any **Subsidiary** or any **Insured Persons** all sums which the **Named Company**, any **Subsidiary** or any **Insured Persons** shall become legally obligated to pay because of liability imposed by law or **Assumed Under Contract** for **Loss** resulting from any **Media Claim** arising out of **Media Activity** by the **Named Company Insured**, or by someone for whose **Media Activity** the **Named Company Insured** is legally responsible, provided, however, that such **Media Activity** occurs during the **Policy Period**.

**II. DEFINITIONS**

1. **Assumed Under Contract** means liability of others, for **Material** furnished by the **Named Company Insured** that the **Named Company Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of **Media Activity**.
2. **Claim** means a written demand received by a **Named Company Insured** for monetary damages or non-monetary relief. A written demand shall include, but is not limited to:
  - a. a civil adjudicatory proceeding or arbitration;
  - b. a formal administrative or regulatory adjudicatory proceeding; or
  - c. a formal civil, administrative or regulatory investigation;against a **Named Company Insured**, including any appeal therefrom.
3. **First Effective Date** means the effective date of the first Media Liability Extension Endorsement issued by the Insurer to the **Named Company Insured** that has been continuously renewed and maintained in effect of which this Endorsement is a renewal.
4. **Insured Persons** means:
  - a. any person who, during the **Policy Period**, is a partner, officer, director or employee of the **Named Company** or **Subsidiary** but solely for **Media Activity** performed on behalf of the **Named Company** or **Subsidiary**;
  - b. any former partner, officer, director, or employee of the **Named Company** but solely for **Media Activity** performed on behalf of the **Named Company** or **Subsidiary** at the time of such affiliation;
  - c. any agent or independent contractor of the **Named Company Insured** or any **Subsidiary**, including distributors, licensees and sub-licensees, but solely for **Media Activity** performed on behalf of the **Named Company Insured** or any **Subsidiary** provided that prior to the provision of such **Media Activity** giving rise to a **Media Claim**, the **Named Company Insured** or such **Subsidiary** agreed in writing to provide insurance to such agent or independent contractor.
5. **Last Termination Date** means the termination date of the last Media Liability Extension Endorsement issued by the Insurer to the **Named Company Insured** in a continuously

renewed succession of such Media Liability Extension Endorsement or Media Liability Policies to the **Named Company Insured** since the **First Effective Date**.

6. **Loss** means damages, settlements, judgments (including any award of pre-judgment and post-judgment interest) and **Defense Costs** for which a **Named Company Insured** is legally obligated to pay on account of a covered **Claim**. **Loss** shall not include:
- a. the return or restitution of fees, expenses or costs for **Media Activity** performed or to be performed by a **Named Company Insured**;
  - b. criminal or civil fines or penalties imposed by law;
  - c. taxes;
  - d. matters which are uninsurable under the law pursuant to which this Policy shall be construed;
  - e. production costs, or the cost of restoring, reprinting, recalling, recovering, shipping, correcting, reprocessing, repairing, replacing, or reproducing erroneous, damaged or lost data or **Material**.

**Loss** shall not include the cost of any non-monetary relief, including without limitation, any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for a **Media Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy.

**Loss** shall include punitive, exemplary or multiple damages if insurable, to the fullest extent permitted by any applicable law. Where the **Named Company Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.

7. **Material** means the content of any media.
8. **Media Activity** means an act or omission committed in the course of:
- a. gathering, acquiring, obtaining, researching, developing and preparing of **Material**, including such activity done by a **Named Company Insured** whose business is advertising; and
  - b. the dissemination or utterance, through any medium, including wireless or electronic medium, of **Material**, including:
    - i. publishing, producing, programming, filming, videotaping, printing, exhibiting, and recording;
    - ii. broadcasting, telecasting, webcasting, cablecasting;
    - iii. syndicating, selling, leasing, licensing, distributing, serializing or releasing.
9. **Media Claim** means a **Claim** arising out of **Media Activity** and alleging:

- a. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
  - b. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
  - c. false arrest, detention or imprisonment or malicious prosecution;
  - d. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
  - e. infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark or service name other than as respects software or software technology;
  - f. plagiarism, piracy, misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information other than as respects software or software technology;
  - g. unfair competition or unfair trade practices alleged in conjunction with E. or F. above, including but not limited to dilution, confusion, deceptive trade practices or unfair trade practices, civil actions for consumer fraud, false, disruptive or misleading advertising or misrepresentation in advertising.
10. **Merchandising Activity** means manufacture, production or distribution of goods (other than media) which contain intellectual property.
  11. **Over-Redemption** means price discounts, prizes, awards, or other valuable consideration given in excess of the total contracted or expected amount.
  12. **Professional services** means those services specified in the attached "Professional Services Endorsement", if any, performed by a **Named Company Insured** for others for a fee.

### III. EXCLUSIONS

1. Exclusions Applicable to all **Loss**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Media Claim** made against a **Named Company Insured**:

- a. for any actual or alleged bodily injury, sickness, or disease, including death of any person, or damage to or destruction of any tangible property including loss of use;
- b. by or on behalf of any of the other **Named Company Insureds**, in any capacity except and to the extent that such **Claim** is in the form of a crossclaim, third-party

- claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Coverage Part;
- c. for any actual or alleged violation of **ERISA or any Similar Act** in connection with any employee pension benefit plan, employee welfare benefit plan or excess benefit plan as defined in 29 U.S.C. 1002, or “employee stock ownership plan” as defined in 26 U.S.C. 4975;
  - d. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any of the following:
    - (1) The filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
    - (2) The Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities.
  - e. based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation, or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Named Company Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, bodily injury, sickness, disease or death of any person, or financial loss to **Named Company Insureds** resulting from any of the aforementioned matters;
  - f. for any actual or alleged discrimination, humiliation, harassment or misconduct that includes but shall not be limited to **Claims** based on an individual’s race, creed, color, age, sex, national origin, religion, handicap, marital status or sexual preference;
  - g. based upon, directly or indirectly arising out of, or in any way involving contractual rights to, or the ownership, of **Material**; however, nothing in this exclusion shall be deemed to apply to a Claim for plagiarism;
  - h. based upon, directly or indirectly arising out of, or in any way involving any **Media Activity** that occurred prior to the **First Effective Date** or after the **Last Termination Date**; however, if the **Media Activity** is the dissemination or broadcast of **Material** which was either initially disseminated or broadcast prior to the **First Effective Date** or continues to be disseminated or broadcast after the **Last Termination Date**, this Policy shall apply as follows:
    - (1) If the **Material** is first disseminated or broadcast before the **First Effective Date** and again after the **First Effective Date** and before the **Last Termination Date**, the Company’s maximum liability shall be limited to that portion of the total **Loss** that the number of dissemination’s or broadcasts after the **First Effective Date** (including those after the **Last Termination Date**) bears to the total number of dissemination’s or broadcasts.

- (2) If the **Material** is first disseminated or broadcast after the **First Effective Date** and before the **Last Termination Date** and then again after the **Last Termination Date**, the Insurer shall be liable for all **Loss** arising from such dissemination's or broadcasts.
- i. based upon, directly or indirectly arising out of, or in any way involving **Merchandising Activity**;
  - j. brought by ASCAP, BMI and/or SESAC or other music licensing organization;
  - k. based upon, directly or indirectly arising out of, or in any way involving actual or alleged infringement of patent;
  - l. based upon, directly or indirectly arising out of, or in any way involving actual or alleged misappropriation of trade secrets;
  - m. based upon, directly or indirectly arising out of, or in any way involving infringement of copyright, trademark, servicemark or trade dress of software or software technology;
  - n. based upon, directly or indirectly arising out of, or in any way involving the publicity or promotion of lotteries, sweepstakes, contests or games of chance including **Over-Redemption** relating therefrom;
  - o. based upon, directly or indirectly arising out of, or in any way involving:
    - (1) charges of price fixing, restraint of trade, monopolization or unfair trade; or
    - (2) any actual or alleged violation of:
      - a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade; or
      - b. any rules or regulations promulgated under or in connection with the above statutes; or
      - c. any similar provision of any state, federal or local statutory law or common law
- not directly related to a **Media Claim** as defined in paragraphs E. or F. of the definition of **Media Claim**;
- p. brought by any entity, not named in the Declarations, if at the time of the act or omission giving rise to such **Claim**:
    - (1) any **Named Company Insured** controlled, owned, operated or managed such entity; or

- (2) any **Named Company Insured** was an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

- q. brought by or on behalf of any federal, state or local regulatory agency or office, whether such **Media Claim** is brought in the name of such regulatory agency or office or by or on behalf of such regulatory agency or office or in the name of any other entity. This exclusion shall not apply to any **Media Claims** based upon **Media Activity** by or on behalf of the **Named Company Insureds** directly for any such regulatory agency or office who is a direct client of the **Named Company**;
- r. based upon, directly or indirectly arising out of, or in any way involving **Professional Services**

2. Exclusions Applicable to a Portion of Loss

The Insurer shall not be liable to pay any **Loss** under this Coverage Part in connection with any **Claim** made against a **Named Company Insured**, for any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, or intentional wrongdoing by a **Named Company Insured**. The Insurer shall provide the **Named Company Insured** with a defense of such **Claims** unless or until the dishonest, fraudulent, criminal or malicious act or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the Insurer's rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against the **Named Company Insured**.

For the purpose of determining the applicability of this exclusion the actual act or omission of any **Named Company Insured** shall not be imputed to any other **Named Company Insured**.

**IV. CHANGES FROM GENERAL TERMS AND CONDITIONS**

- 1. Solely for the purposes of the coverage provided by this *Media Liability Coverage Part*, the Notice at the beginning of the General Terms and Conditions and Section III, **EXTENDED REPORTING PERIOD**, are deleted in their entirety.
- 2. Solely for the purposes of the coverage provided by this *Media Liability Coverage Part*, Section VII. **NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions is deleted in its entirety and replaced as follows:

Duties in the Event of an Occurrence or Media Claim

- A. The **Named Company Insured**, as a condition precedent to the obligations of the Insurer under this Endorsement, shall give written notice to the Insurer as soon as reasonably possible:
  - 1. of any **Media Claim**;

2. of the **Named Company Insureds'** receipt of any notice, advice or threat, whether written or verbal, that any person or organization intends to hold the **Named Company Insured** responsible for any alleged **Media Activity**. Such notice to the Insurer shall include, to the extent possible,
  - a. the specific **Media Activity**;
  - b. the dates and persons involved;
  - c. the identity of anticipated or possible claimants; and
  - d. the circumstances by which the **Named Company Insured** first became aware of the possible **Media Claim**.

**V. CONFIDENTIAL SOURCE**

The **Named Company Insureds'** rights under this Policy shall not be prejudiced by the **Named Company Insureds'**:

- a. refusal to reveal a confidential source or to produce reporters notes or any other documents or information obtained by the **Named Company Insured**; or
- b. accidental or unintentional identification of the identity of a confidential source, in the course of the **Named Company Insureds' Media Activity** with respect to which the **Named Company Insured** has asserted a **Claim** of reporter's privilege or applicable First Amendment, statutory or common-law privilege relating to the protection of newsgathering activity.