

I. INSURING AGREEMENT

Media Liability Coverage:

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

II. DEFINITIONS:

A. **Assumed Under Contract** means liability of others, for **Material** furnished by the **Insured**, that the **Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of **Media Activity**.

B. **Bodily Injury** means injury to the body, sickness, or disease sustained by a person, including death resulting from such injuries. **Bodily Injury** does not include emotional distress or mental anguish.

C. **Damages** means judgments, awards and settlements, provided any settlement is negotiated with the assistance and approval of the Company. **Damages** includes prejudgment interest awarded against the **Insured** on that part of the judgment the Company offers to pay. If the Company makes an offer to pay the applicable Limits of Liability, it will not pay any prejudgment interest based on that period of time after the offer. **Damages** shall include punitive, exemplary or multiple damages if insurable, to the fullest extent permitted by any applicable law. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Company shall not challenge that determination of insurability.

Damages shall not include: (i) criminal or civil fines or penalties imposed by law; (ii) taxes; (iii) any amounts for which there is no legal recourse against the **Insureds**; (iv) matters which are uninsurable under the law pursuant to which this Policy shall be construed; (v) production costs, or the cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost data or **Material**; and (vi) return of profits.

Damages shall also 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 Company shall provide a defense for a **Media Claim** seeking injunctive relief. Such defense will not waive any of the **Company's** rights under this Policy.

D. **First Effective Date** means the effective date of the first Media Liability **Coverage Part** or Media Liability Policy issued by the Company to the **Named Insured** which has been continuously renewed and maintained in effect of which this **Coverage Part** is a renewal.

E. **Insured** means:

1. the **Named Insured** and any **Subsidiary**;
2. any person who is or becomes a partner, officer, director, trustee, or employee of the **Named Insured** or any **Subsidiary** but solely for **Media Activity** performed on behalf of the **Named Insured** or any **Subsidiary**. As used herein, the term "employee" includes a

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person leased to the **Named Insured** or any **Subsidiary** by an employment leasing agency;

3. any person who was affiliated with the **Named Insured** or any **Subsidiary** as a partner, officer, director, trustee, or employee but solely for **Media Activity** performed on behalf of the **Named Insured** at the time of such affiliation; or,
4. any agent or independent contractor of the **Named Insured** or any **Subsidiary**, including distributors, licensees and sub-licensees, but solely for **Media Activity** performed on behalf of the **Named Insured** or any **Subsidiary** provided that prior to the date such **Media Activity** gives rise to a **Media Claim**, the **Named Insured** or such **Subsidiary** agreed in writing to provide insurance to such agent or independent contractor.

- F. **Last Termination Date** means the termination date of the last **Media Liability Coverage Part** or Media Liability Policy issued by the Company to the **Named Insured** in a continuously renewed succession of such **Media Liability Coverage Parts** or Media Liability Policies to the **Named Insured** since the **First Effective Date**.
- G. **Merchandizing Activities** means manufacture, production or distribution of goods (other than media) which contain intellectual property.
- H. **Over-redemption** means price discounts, prizes, awards, or other valuable consideration given in excess of the total contracted or expected amount.

III. EXCLUSIONS

This Policy does not apply to any **Media Claim**:

- A. alleging dishonest, fraudulent or malicious acts or omissions, or intentional wrongdoing by any **Insured** or at the direction of any **Insured**. However, the Company shall provide a defense for such **Media Claim** unless or until there is a final judgment adverse to the **Insured** at the court of original jurisdiction and any appeals derived therefrom. The **Insured** is obligated to reimburse **Claim Expenses** if and when there is such a final judgment. Such defense will not waive any of the **Company's** rights under this Policy;
- B. based upon, directly or indirectly arising out of, or in any way involving **Bodily Injury** or **Property Damage**;
- C. based upon or arising out of actual or alleged violation of **ERISA or any Similar Act**;
- D. based upon or arising out of:
 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 **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way

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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**, or financial loss to the **Named Insured** or any **Subsidiary**, their security holders or their creditors resulting from any of the aforementioned matters; however, this exclusion does not apply to any **Media Claim** for publication of **Material** disclosing pollution;

- 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 or arising out of the publicity or promotion of lotteries, sweepstakes, contests or games of chance including **Over-redemption** relating therefrom;
- H. based upon or arising out of patent infringement;
- I. based upon or arising out of infringement of copyright, trademark, servicemark or trade dress of software code or design;
- J. based upon or arising out of:
 - 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;
 - 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** alleging infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark or service name, plagiarism, piracy, misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information;

- K. brought by any entity, not named in the Declarations, if at the time of the **Media Activity** giving rise to such **Media Claim**:
 - 1. any **Insured** controlled, owned, operated or managed such entity; or
 - 2. any **Insured** was an owner, partner, director, officer or employee of such entity;
 - 3. any **Insured** was owned, operated or controlled by 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 entity shall be deemed to own such entity;

- L. based upon or arising out of contractual rights to, or the ownership of **Material** except to the extent such **Claim** is based on or arises out of plagiarism;
- M. based upon or arising out of **Merchandizing Activities**;
- N. based upon or arising out of **Professional Services**;
- O. brought by ASCAP, BMI and/or SESAC or any other music licensing organization;
- P. based upon or arising out of any **Media Activity** that occurred prior to the **First Effective Date**

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or after the **Last Termination Date**; however, if the **Media Activity** is dissemination or utterance of **Material** which was either initially disseminated or uttered prior to the **First Effective Date** or continues to be disseminated or uttered after the **Last Termination Date** this Policy shall apply as follows:

1. If the **Material** is first disseminated or uttered 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 **Damages and Claim Expenses** which the number of disseminations or utterances after the **First Effective Date** (including those after the **Last Termination Date**) bears to the total number of disseminations or utterances.
 2. If the **Material** is first disseminated or uttered after the **First Effective Date** and before the **Last Termination Date** and then again after the **Last Termination Date**, the Company shall be liable for all **Damages and Claim Expenses** arising from such disseminations or utterances;
- Q. by or on behalf of any of the other **Insureds**, in any capacity except and to the extent that such **Media Liability 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 **Media Liability Claim** which is not otherwise excluded under this **Coverage Part**
- R. 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 **Insured** directly for any such regulatory agency or office who is a direct client of the **Named Insured**.

IV. Duties in the Event of an Occurrence or Media Claim

The **Insured**, as a condition precedent to the obligations of the Company under this **Coverage Part**, shall give written notice to the Company as soon as reasonably possible:

- A. of any **Media Claim**;
- B. of the **Insured's** receipt of any notice, advice or threat, whether written or verbal, that any person or organization intends to hold the **Insured** responsible for any alleged **Media Activity**. Such notice to the Company shall include, to the extent possible,
 1. the specific **Media Activity**;
 2. the dates and persons involved;
 3. the identity of anticipated or possible claimants; and
 4. the circumstances by which the **Insured** first became aware of the possible **Media Claim**.

V. CONFIDENTIAL SOURCE

The **Insured's** rights under this Policy shall not be prejudiced by the **Insured's**:

- A. refusal to reveal a confidential source or to produce reporters notes or any other documents or information obtained by the **Insured**; or
- B. accidental or unintentional identification of the identity of a confidential source, in the course of the **Insured's Media Activities** with respect to which the **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.