

## CapMedia and Entertainment Liability Policy Media Liability Coverage Section

(Claim Expenses Are Paid In Addition To The Limits of Liability)

**THIS COVERAGE IS PROVIDED ON AN OCCURRENCE BASIS. COVERAGE APPLIES TO ONLY THOSE CLAIMS ARISING OUT OF WRONGFUL ACTS WHICH TAKE PLACE DURING THE POLICY PERIOD.**

**THE LIMITS OF LIABILITY WILL NOT BE REDUCED OR EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES.**

In consideration of the payment of the premium and in reliance upon all the statements made and the information contained in the **Application** and subject to the Declarations, General Terms and Conditions and all of the terms and conditions of this Coverage Section, the **Company** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

### I. INSURING AGREEMENTS

#### A. MEDIA LIABILITY COVERAGE

The **Company** will pay on behalf of the **Insured**, **Damages**, in excess of the Retention and subject to the Limits of Liability specified in the Declarations, that the **Insured** becomes legally obligated to pay as the result of a **Claim** for **Media Wrongful Acts** which take place during the **Policy Period**.

#### B. CONTEXTUAL ERRORS AND OMISSIONS COVERAGE

The **Company** will pay on behalf of the **Insured**, **Damages**, in excess of the Retention and subject to the Limits of Liability specified in the Declarations, that the **Insured** becomes legally obligated to pay as the result of a **Claim** for **Contextual Errors and Omissions** which take place during the **Policy Period**.

#### C. DECLARATORY JUDGMENT ACTIONS

The **Company** will pay on behalf of the **Insured**, reasonable legal expenses, in excess of the Retention and subject to the Limits of Liability specified in the Declarations, to initiate an action seeking declaratory relief or a declaratory judgment to determine the rights and obligations of the **Insured**, provided that:

1. the **Insured** submits a written request to the **Company** to initiate such an action on its behalf;
2. such action is either in response to a pending suit against the **Insured**, or a potential or threatened suit against the **Insured**, which is based upon a **Media Wrongful Act** in the form of copyright or trademark infringement which takes place during the **Policy Period**;
3. such pending, potential or threatened suit is determined by the **Company** to be otherwise covered or potentially covered under this Policy as a **Claim**;
4. the **Company** reasonably believes that such action is likely to mitigate **Damages** and **Claim Expenses** for which coverage would be provided under this Policy, or is strategically advantageous to the **Insured** in resolving the pending, potential or threatened suit; and
5. the **Company** authorizes and approves such action in advance.

With respect to this Insuring Agreement C., the **Company** will select counsel, subject to the consent of the **Insured**, to represent the **Insured** in the action described above.

Solely with respect to Insuring Agreements A. and B., the **Company** has the right and the duty to defend a covered **Claim** against an **Insured**, regardless of whether the allegations of the **Claim** are groundless, false or fraudulent. **Claim Expenses** incurred by the **Company** on behalf of the **Insured** in the investigation and defense of a covered **Claim** shall be paid in addition to the Limits of Liability.

### II. DEFINITIONS

- A. **Advertising** means **Public Appearances**, publicity, press releases or promotional materials of any kind, in **Covered Media** or relating to **Covered Media**.

**Advertising** does not include:

1. one-on-one written or oral communications;

2. any lottery, sweepstakes, coupons, contests or games of chance, including but not limited to any redemption of any of the above; or
  3. the design, print, images or information contained in or on the packaging or labeling of any goods or products, or instructions included with any goods or products, that are publicly disseminated to promote **Covered Media**.
- B. **Claim** means:
1. a suit, a written demand or a written assertion of a legal right, received by any **Insured** for monetary **Damages** or services;
  2. a judicial or alternative dispute resolution proceeding (including arbitration and mediation proceedings), seeking monetary damages, services or injunctive relief against an **Insured**;
  3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** against an **Insured**;  
or
  4. a written demand for a retraction or correction of **Content**.
- C. **Contextual Errors and Omissions** means any negligent act, error, omission, misstatement, misleading statement or misrepresentation in **Content** used or disseminated in **Covered Media**, by the **Insured** or with the permission of the **Insured**.
- D. **Covered Media** means the publications, broadcasts, communications or other **Content** specified in the Declarations or in an Endorsement to this Policy, and related **Advertising**. **Covered Media** also includes **Content** disseminated through third party social networking sites by **Insureds** acting within the course and scope of employment for the **Named Insured** or any **Subsidiary**.
- E. **Damages** means:
1. amounts which an **Insured** becomes legally obligated to pay as a result of a covered judgment, award or settlement; including **Liability Assumed Under Contract**;
  2. costs assessed against an **Insured** in any suit or proceeding defended by the **Company**, unless such costs are assessed as a sanction for an **Insured's** delay or misconduct in the litigation process;
  3. pre-judgment interest and post-judgment interest assessed before the **Company** has paid, offered to pay or deposited in court the part of the judgment that is covered by this Policy and that is within the applicable Limit of Liability; and
  4. punitive, exemplary or multiple damages, where insurable by law. For the purpose of insuring punitive, exemplary or multiple damages under this Policy, the **Company** and the **Insured** agree that the laws of the jurisdiction most favorable to the insurability of punitive, exemplary or multiple damages will control provided such jurisdiction is where:
    - a. the punitive, exemplary or multiple damages were awarded;
    - b. the **Insured** is incorporated or has a place of business;
    - c. the **Company** is incorporated or has its principal place of business;
    - d. all or part of the conduct giving rise to the **Claim** occurred; or
    - e. this Policy was issued or became effective.

**Damages** do not include any of the following:

- a. amounts which are uninsurable by law;
- b. loss of earnings or profit by any **Insured**; or the salaries, wages, fees, overhead, benefit expenses or other compensation payable to any **Insured**;
- c. taxes or governmental, civil or criminal fines or penalties;
- d. fines, fees, sanctions or penalties levied against the **Insured**, including those charged by any licensing or industry organization or association;
- e. production costs, or the cost of reprinting, recalling, recovering, correction, reprocessing, restoring, repairing, replacing, reproducing or removing **Content**;
- f. royalties, sums, deposits, commissions, charges or fees assessed by ASCAP, SESAC, RIAA, BMI or other licensing organizations, or on their behalf, or for others, arising from the direct or indirect failure, by the **Insured** to obtain or maintain required licenses or payments; or restitution paid to or payable by an **Insured**;
- g. the return, refund or disgorgement of fees, profits or other amounts allegedly wrongfully held or retained by any **Insured**;
- h. costs of complying with an order granting injunctive or non-monetary relief, in any form; or the costs of complying with any regulatory orders, settlements or judgments or administrative decisions;
- i. actors' or other entertainers' pensions;
- j. disputed fees, charges or commissions for goods or services;

- k. consideration offered to customers or clients, or potential customers or clients, or others, in the form of discounts, coupons, vouchers, prizes, or similar awards or benefits;
  - l. any change in the monetary value of any account, security, monies, or tangible property, including the monetary value of any electronic funds transfer;
  - m. sums due under contract or pre-agreed contractual penalties; or
  - n. funds, monies, securities or tangible property lost due to theft, misappropriation, unauthorized transfer or other loss.
- F. **Droit Moral** means the rights of an individual or entity which has created **Content**, to attribution and the integrity of a work.
- G. **Invasion of Privacy** means the following, when specifically targeted against an individual and when committed in the performance of **Media Activities**:
- 1. invasion of or interference with a person's right of privacy or private occupancy, including:
    - a. eavesdropping;
    - b. intrusion upon seclusion;
    - c. publicity which puts him or her in a false light to the public;
    - d. public disclosure of private facts;
    - e. commercial misappropriation of a person's name, persona or likeness; and
    - f. wireless signal interception for the purpose of perpetrating any of the foregoing.
- H. **Media Activities** means the following activities:
- 1. researching, investigating, gathering, acquiring, obtaining, preparing, compiling or producing **Content** for **Covered Media**;
  - 2. any publication, broadcast telecast, cablecast, webcast, podcast, serialization, production, online dissemination or other dissemination of **Content** in, or directly related to, **Covered Media**;
  - 3. **Advertising** in, or directly related to, **Covered Media**;
  - 4. the release, distribution, syndication, licensing, sale, lease or exhibition of **Content** for **Covered Media**;
  - 5. an editorial decision to deny or limit access to **Covered Media** to prevent the utterance or dissemination of **Content**;
  - 6. internet social networking in connection with **Covered Media**; and
  - 7. any **Public Appearance** directly related to **Covered Media**.
- I. **Media Wrongful Act** means any actual or alleged act, error or omission, committed by an **Insured** in the performance of **Media Activities**, including, but not limited to, any of the following:
- 1. libel, slander, trade libel, product disparagement or any other form of defamation involving harm to the character or reputation of any person or entity;
  - 2. outrage, outrageous conduct, infliction of emotional distress, malicious falsehood or prima facie tort;
  - 3. infringement of copyright or **Title**, violation of **Droit Moral**, passing off, plagiarism, **Piracy** or misappropriation of intellectual property rights, information or ideas under an implied contract;
  - 4. infringement or dilution of trademark, trade name, trade dress, service mark, service name or **Slogan**;
  - 5. breach of a license to use a third party's trademarked or copyrighted **Content**, but only arising from a use that unintentionally exceeds the scope of the license with respect to the territory, duration or medium in which the **Content** may be used and only when alleged in conjunction with a **Claim** for a **Media Wrongful Act** as specified in paragraphs II.I.3. and II.I.4. above;
  - 6. **Invasion of Privacy**;
  - 7. wrongful entry or eviction, trespass, harassment or stalking;
  - 8. false arrest or imprisonment, detention, abuse of process or malicious prosecution;
  - 9. failure to give credit or attribution of authorship pursuant to a written agreement to which the **Insured** is a party;
  - 10. promissory estoppel or breach of any oral, written or implied agreement to maintain the confidentiality of a source that supplies information or **Content** to an **Insured** in confidence or the failure to portray a source or a subject in a certain manner or light;
  - 11. violation of the Fourth Amendment of the United States Constitution or other equivalent state statute prohibiting unreasonable searches and seizures related to newsgathering;

12. unfair competition or conspiracy, deceptive business practices or false designation of origin, but only when alleged in conjunction with and based on the same factual allegations as a **Claim** for a **Media Wrongful Act** as specified in paragraphs II.I.1. through II.I.11. above; and
13. negligent supervision of an employee of the **Named Insured** or any **Subsidiary**, but only when alleged in, and based on the same factual allegations as a **Claim** for a **Media Wrongful Act** as specified in paragraphs II.I.1. through II.I.11. above.

A **Media Wrongful Act** shall not include a **Contextual Error or Omission**.

- J. **Piracy** means the wrongful use, reprinting or reproduction of copyrighted **Content**.
- K. **Public Appearances** means public speaking and appearances by an **Insured** (other than an **Independent Contractor**) acting within the capacity and scope of such person's duties on behalf of the **Named Insured** or any **Subsidiary**, on media outlets owned or operated by third parties, including speeches, interviews, press conferences and seminars.
- L. **Slogan** means a distinctive phrase used in **Advertising** which has not been copyrighted or trademarked.
- M. **Title** means the caption or name of a literary or artistic work which has not been copyrighted or trademarked; provided that **Title** will not include the literary or artistic work itself, any goods or products, or any packaging of any goods or products.
- N. **Wrongful Acts** include both **Media Wrongful Acts** and **Contextual Errors and Omissions**.

### III. LIMITS OF LIABILITY AND RETENTION

#### A. LIMITS OF LIABILITY

1. The Limits of Liability provided under this Coverage Section represents the most the **Company** will pay for all **Damages** under this Coverage Section, regardless of the number of:
  - a. **Insureds** this Coverage Section covers;
  - b. **Claims** that are made;
  - c. Persons or organizations making **Claims**;
  - d. **Wrongful Acts** which occur;
  - e. Declaratory Judgment Actions brought; or
  - f. **Covered Media**.

2. The Each Wrongful Act Limit of Liability, as specified in the Declarations for this Coverage Section, represents the most the **Company** will pay for all **Damages** resulting from each **Wrongful Act** that takes place during the **Policy Period**. The Each Declaratory Judgment Action Limit of Liability, as specified in the Declarations for this Coverage Section, represents the most the **Company** will pay for all reasonable legal expenses associated with such Declaratory Judgment Action.

In the event that a Declaratory Judgment Action is brought in response to a covered **Claim**, or a **Claim** brought subsequent to the filing of a Declaratory Judgment Action is based on the same or substantially similar facts and circumstances, then only one Limit of Liability shall apply to all amounts payable under Insuring Agreements A., B. and C. above (which shall be the Each Wrongful Act Limit of Liability applicable to such **Claim**).

3. The Coverage Aggregate Limit of Liability specified in the Declarations for this Coverage Section represents the most the **Company** will pay for all **Damages** resulting from all **Wrongful Acts** that take place during the **Policy Period**.

4. Payment of Claim Expenses

The **Company** will pay on behalf of the **Insured**, in excess of the Retention, and in addition to the Limits of Liability, all **Claim Expenses** incurred by the **Company**, or by the **Insured** with the **Company's** prior knowledge and consent, in the investigation, defense and settlement of a covered **Claim**, subject to paragraph III.A.5. below. Payment of **Claim Expenses** will be subject to all terms and conditions of this Policy including those found in the General Terms and Conditions, which pertain to the **Insured's** duties in the event of a **Claim**, conduct of defense and cooperation.

5. Exhaustion of the Limits of Liability

The **Company** will not be obligated to pay **Claim Expenses** or **Damages**, or defend or continue to defend any **Claim** under this Coverage Section, after either the Coverage Aggregate Limit of Liability has been exhausted by the payment of **Damages** and/or by legal expenses associated with a Declaratory Judgment Action, or the Policy Aggregate Limit of Liability has been exhausted by payment of **Damages**, **Claim Expenses** or other amounts payable under this Policy.

#### B. RETENTION

1. The Retention amount applicable to **Claims** for which coverage is provided under Insuring Agreements A. and B. is the amount specified in the Declarations for Each **Wrongful Act**. The **Company's** obligation to pay **Claim Expenses** and **Damages** applies only to sums in excess of the Retention. If the total of all **Claim Expenses** and **Damages** is within the Retention, The **Company** will have no duty to pay any **Claim Expenses** or **Damages** for a **Claim**.

2. The Retention amount applicable to Declaratory Judgment Actions for which coverage is provided under Insuring Agreement C. is the amount specified in the Declarations for Each Declaratory Judgment Action. The **Company's** obligation to pay reasonable legal expenses applies only to sums in excess of the Retention. If the total of all reasonable legal expenses for a Declaratory Judgment Action is within the Retention, the **Company** will have no duty to pay any legal expenses for such Declaratory Judgment Action.
3. The application of the Retention will not erode the Limits of Liability of this Coverage Section or the Policy Aggregate Limit of Liability.
4. If at the **Company's** sole discretion, the **Company** has advanced or paid part or all of the Retention on behalf of the **Insured**, the **Insured** will be obligated to reimburse such amounts to the **Company** upon demand.

## IV. CONDITIONS

### A. SETTLEMENT OF A CLAIM

#### 1. Insured's Right to Settle a Claim Within the Retention Amount

The **Named Insured** may settle any **Claim** for which the total amount of **Claim Expenses** and **Damages** associated therewith is less than the amount of the remaining Retention. No offer to settle any other **Claim** will be made or accepted by the **Named Insured** without the prior written consent of the **Company**.

#### 2. The Company's Right to Settle a Claim

The **Company** may enter into the settlement of any **Claim** as it deems appropriate, subject to the prior consent of the **Named Insured**, which shall not be unreasonably withheld.

#### 3. The **Company** and the **Named Insured** agree to cooperate in good faith with respect to the settlement of any **Claim**, and to promptly notify the other with respect to any offer of settlement.

### B. RELATED ACTS DEEMED A SINGLE ACT

1. The date of the first dissemination of **Covered Media, Content** or **Advertising**, or the date of the first **Public Appearance**, shall be deemed the date that a **Wrongful Act** first takes place, regardless of the number of repetitions, versions or forms of **Covered Media, Content, Advertising** or **Public Appearances**. The Limits of Liability and Retention in effect on the date of the first dissemination or first **Public Appearance** will apply.
2. In the event that a **Claim** is made prior to the dissemination of **Covered Media, Content** or **Advertising**, or prior to the **Public Appearance**, the **Wrongful Act** will be deemed to have taken place on the date of the first act, error or omission in the preparation of **Covered Media, Content** or **Advertising**, or the **Public Appearance**. The Limits of Liability and Retention in effect on the date of the first act, error or omission will apply.
3. All **Wrongful Acts** 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, will be treated as one **Wrongful Act** deemed to have taken place on the date of the first act, error or omission or **Wrongful Act**, regardless of the number of repetitions, versions or forms of **Covered Media**, and only one "Each Wrongful Act" Limit of Liability shall apply. The Limits of Liability and Retention in effect on the date of the first act, error, omission or **Wrongful Act** will apply.

### C. RETRACTION OR CORRECTION OF CONTENT

The **Insured** will have sole discretion regarding the need to retract, correct or clarify **Content** that has been uttered or disseminated or is the subject of a **Claim** under this Policy.

### D. PROTECTION OF CONFIDENTIAL SOURCES

The rights of an **Insured** under this Policy will not be prejudiced by the refusal of any **Insured**, or anyone for whose acts any **Insured** is legally liable, to reveal the identity of a confidential source or to divulge confidential information in connection with a **Claim** under this Policy.

## V. EXCLUSIONS

In addition to the Exclusions specified in the General Terms and Conditions, this Coverage Section shall not apply to any **Claim** based upon, arising out of, resulting from, or in connection with, in whole or part, any actual or alleged:

#### A. Bodily Injury

**Bodily Injury** caused by the use of any product, including but not limited to tobacco, alcohol, pharmaceutical, or firearm products;

#### B. Bodily Injury or Property Damage

**Bodily Injury or Property Damage**; including mental anguish or emotional distress resulting therefrom;

Provided however, that this Exclusion will not apply to:

1. **Bodily Injury** or **Property Damage** arising out of a **Contextual Error or Omission**;
2. Mental anguish or emotional distress actually or allegedly arising from a **Media Wrongful Act**; or
3. **Claims** alleging incitement in connection with **Media Wrongful Acts**;

C. Breach of Contract

Breach of an express or implied contract or agreement;

Provided however, that this Exclusion will not apply to:

1. liability an **Insured** would have in the absence of such contract or agreement;
2. **Liability Assumed Under Contract**;
3. breach of license, contract or agreement as described in the definition of **Media Wrongful Act**, paragraphs 5., 9. and 10.;  
or
4. misappropriation of ideas under implied contract as specified in the definition of **Media Wrongful Act**, paragraph 3.;

D. Computer/Network Failure

The failure to perform of any computer; computer system or network; hardware; software program; data storage unit, device, system or database; regardless of whether the failure to perform was caused by another event or condition;

E. Content

**Content** that is created or disseminated by a user that is not acting in the capacity of an **Insured**, at the specific direction of an **Insured**, or with the **Insured's** prior express approval;

F. Criminal Acts

Criminal, dishonest, fraudulent, malicious or knowingly wrongful acts, or any intentional violation of any law, by any **Insured**.

If a **Claim** invokes the **Company's** duty to defend an **Insured** but for allegations of such acts, then the **Company** will defend the **Insured** in such **Claim** until there is a finding by a jury, judge, or arbitrator, or an admission by an **Insured** (or by a person who would be an **Insured** if that person had not acted outside the scope of their duties), that the **Insured** committed, participated in, consented to, acquiesced to, or had actual or constructive knowledge of, such acts.

The **Company** will not pay any settlement or judgment associated with such finding or admission. The **Company** retains the right to seek reimbursement of **Claim Expenses** paid by the **Company** in such **Claim** from the party found to have committed such acts or made such an admission.

This Exclusion will not apply:

1. to an **Insured**, in the absence of an admission or a finding as described above;
2. if the acts were approved in advance by the **Insured's** legal counsel, based upon a good faith belief that the acts would be protected by the First Amendment of the U.S. Constitution, or a provision of the applicable state constitution protecting freedom of speech and press, or based on a good faith belief that the act did not constitute a violation of a criminal statute; or
3. to the prosecution of an **Insured** for criminal libel or violations of the Espionage Act of 1917.

In no other event will the **Company** defend any **Insured** against or in criminal proceedings, regardless of the allegations;

G. Deceptive Trade Practices

Unfair competition, unfair or deceptive business practices or trade practices; or any activities in violation of any laws or regulations relating to consumer fraud or consumer protection;

Provided however, that this Exclusion will not apply to a **Claim** arising out of a **Media Wrongful Act** as specified in paragraph 12. of that definition;

H. Media Credits

Any dispute relating to media credits or entitlement to or the failure to give media credits, or any payments in connection with such credits;

I. Music Activities

Music activities or services, including, but not limited to, song writing, musical composition, music distribution, compilation, publishing, live or recorded performance, production or reproduction;

J. Privacy and Network Security; Unauthorized Access to Data

1. access to or disclosure of, or potential access to or disclosure of, failure to keep secure or unauthorized use of, any person's or organization's confidential business or personal information, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information;
2. the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data;
3. unauthorized access to, use of, or tampering with data or systems; or the introduction of a virus or other malicious code into data or systems, by any person;
4. the functioning or non-functioning or availability or unavailability of: the internet or any similar facility; any intranet or private network or similar facility; any website, search engine, portal or similar third party application service; or
5. any act, error or omission in violation of any law or regulation of the United States or any other country associated with the confidentiality, security, protection, control and use of information or data of any kind;

K. Regulatory Actions

Actions, decisions, orders or proceedings, including formal or informal investigations or inquiries, or any subpoena for documentation or testimony, brought or initiated by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any other federal, state or local governmental regulatory agency, or other governmental, regulatory or administrative body alleging the violation of any federal, state or local laws or regulations; or

L. Theft of Trade Secrets

Misappropriation or theft of trade secrets;

Provided however, that this Exclusion will not apply to **Claims** for or arising from disclosure of trade secrets when the disclosure is made in **Covered Media**.