

CyberLiability Plus™ Insurance Policy

Claim Expense Within the Policy Limit

IMPORTANT NOTICE

CLAIM EXPENSE IS INCLUDED IN THE POLICY LIMIT AND THE SELF-INSURED RETENTION. ALL WORDS OR PHRASES, OTHER THAN CAPTIONS, PRINTED IN BOLD FACE ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT INSURED.

In consideration of the payment of the premium and in reliance on the statements in the Declarations and subject to all other terms of this policy, the Company designated in the Declarations agrees with the **Insured** to the following:

I. INSURING AGREEMENT

The Company will pay on behalf of the **Insured** all **Damages** and **Claim Expense** in excess of the Self-Insured Retention and within the Policy Limit which the **Insured** becomes legally obligated to pay because of liability as a result of one or more **Claims** arising out of:

- 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, 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. infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
- D. infringement of copyright, plagiarism or misappropriation of ideas under implied contract;
- E. misuse of an intellectual property right in **Content**, but only when alleged in conjunction with the types of **Claims** named in C. and D. above;
- F. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
- G. false arrest, detention or imprisonment or malicious prosecution;
- H. failure to prevent a party other than any **Insured** from: unauthorized access to, use of, tampering with or introduction of malicious code into data or systems; or
- I. errors, omissions or negligent acts;

committed by the **Insured** during the Policy Period in performing **Cyberspace Activities** as stated in Item 6. of the Declarations, including obtaining, processing, uttering or disseminating **Content** in or for the **Cyberspace Activities**, regardless of when **Claim** is made or suit is brought.

II. EXCLUSIONS

- A. The Company will not be obligated to pay **Damages** or **Claim Expense** for **Claims** for or arising out of actual or alleged:
 - 1. performance of **Cyberspace Activities** prior to the effective date of this policy or after the termination date of the last CyberLiability Plus™ Insurance Policy issued to the **Insured** by an **Insurer**;
 - 2. **Bodily Injury** or **Property Damage**;
 - 3. harassment, misconduct or discrimination because of or relating to race, creed, color, age, sex, sexual preference, national origin, religion, handicap, disability or marital status;
 - 4. infringement of patent;

CyberLiability Plus™ Insurance Policy

5. malfunction or defect of any hardware, equipment or component, except this Exclusion does not apply when the malfunction or defect is solely the result of the **Insured's** negligence in performing **Cyberspace Activities**;
 6. electrical failure including electrical power interruption, surge, brownout or blackout;
 7. unauthorized access to, use of, tampering with or introduction of malicious code into data or systems by any **Insured**;
 8. liability assumed under any contract or agreement, except this Exclusion does not apply to liability which the **Insured** would have incurred in the absence of such contract or agreement;
 9. breach of contract, warranty or guarantee;
 10. false, misleading, deceptive, fraudulent or misrepresenting statements in advertising about the **Insured's** own product or service;
 11. antitrust, restraint of trade, or unfair or deceptive trade practices;
 12. acts of the **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
 13. violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws;
 14. employer-employee relations or other usual and ordinary business transactions of the **Insured** that do not directly involve the performance of the **Insured's Cyberspace Activities**; or
 15. the actual or threatened discharge, dispersal or release of any **Pollutant**; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the clean-up, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This Exclusion is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable or whether or not any **Insured** caused or contributed to the pollution.
- B. The Company will not be obligated to pay **Damages** or **Claim Expense** for **Claims** for or arising out of:
1. any act, error or omission intentionally committed while knowing it was wrongful; or
 2. an act, error or omission that a jury, court or arbitrator finds dishonest, fraudulent, criminal or malicious. This Exclusion does not apply to **Claim Expense** incurred by the Company prior to such finding. However, upon that determination by a jury, court or arbitrator, the Company will have the right to seek recovery of the **Claim Expense** incurred from the party(ies) found to have committed dishonest, fraudulent, criminal or malicious acts.
- C. The Company is not obligated to pay **Damages** or **Claim Expense** for **Claims** made by:
1. any **Insured**;
 2. any entity which is a parent, affiliate, subsidiary, joint venturer, co-venturer or other entity in which any **Insured** owns an interest or is a partner;
 3. any entity directly or indirectly controlled, operated or managed by an entity described in Part II.C.2. above;
 4. any independent contractor supplying **Content**, material or services to the **Insured**, but only with respect to **Claims** involving disputes over the ownership or exercise of rights in the **Content**, material or services supplied; or
 5. any regulatory authority, or any administrative actions, decisions, orders or proceedings by any federal, state or local governmental agency.

CyberLiability Plus™ Insurance Policy

III. POLICY LIMIT AND SELF-INSURED RETENTION

A. Policy Limit

Regardless of the number of:

1. **Insureds** under this policy,
2. acts committed in the performance of **Cyberspace Activities**,
3. policies issued by the Company,
4. persons or organizations who sustain **Damages**, or
5. **Claims** made or suits brought:

the most the Company will pay is as follows:

a. Each Loss

Subject to paragraph b. below, the Policy Limit for **Each Loss** stated in Item 3. of the Declarations is the most the Company will pay for **Damages** and **Claim Expense** combined arising out of **Each Loss**.

b. Total Limit of Insurance

The Total Limit of Insurance stated in Item 3. of the Declarations is the most the Company will pay for **Damages** and **Claim Expense** combined for the total of all **Claims** covered under this policy.

B. Self-Insured Retention

The Self-Insured Retention stated in the Declarations will be those amounts first incurred and payable by the **Insured** for **Each Loss**. The Self-Insured Retention applies to both **Damages** and **Claim Expense** or any combination thereof.

The Policy Limit will be in excess of the Self-Insured Retention amount stated in the Declarations. The Self-Insured Retention will not reduce the Policy Limit.

C. Application of Policy Limit and Self-Insured Retention to Each Loss

For **Each Loss**, the Policy Limit and Self-Insured Retention that apply will be the Policy Limit and Self-Insured Retention in effect on the date that **Each Loss** is deemed to have taken place, as provided in Part IV.G.

IV. DEFINITIONS

- A. "**Bodily Injury**" means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** also means disability, emotional distress, mental anguish, mental injury, shock or fright when these conditions are the result of physical injury, sickness, disease or death.
- B. "**Claim**" means a demand or assertion of a legal right made against any **Insured**, even if any of the allegations of the **Claim** are groundless, false or fraudulent. **Claim** also means a suit seeking injunctive relief relating to the perils specified in Part I. **INSURING AGREEMENT**.
- C. "**Claim Expense**" means, when authorized and approved by the Company:
 1. fees charged by an attorney in defense of a **Claim**, including such fees necessitated by a demand for a retraction or correction;
 2. all other fees, costs and expenses which result from the investigation, discovery, adjustment, defense, negotiation, arbitration, mediation, settlement or appeal of a **Claim**;
 3. interest on any part of a judgment not exceeding the Policy Limit that accrues after the entry of the judgment and before the Company has paid or tendered or deposited the applicable judgment amount in court; and

CyberLiability Plus™ Insurance Policy

4. premiums on appeal bonds required as a result of a covered **Claim** and premiums on bonds to release attachments for a bond amount not exceeding the Policy Limit, but the Company has no obligation to apply for or furnish any such bonds.

Claim Expense does not include salary charges or expenses of regular employees of the **Insured**.

- D. "**Content**" means printed, audio, visual, digital or informational material.
- E. "**Cyberspace Activities**" means those services or other activities as described in Item 6. of the Declarations.
- F. "**Damages**" means monetary judgment, award or settlement, including those that are actual, statutory, punitive or exemplary, except when applicable law prohibits insurance for punitive or exemplary damages; and legal expense or other costs included as part of a judgment, award or settlement.

Damages does not include civil or criminal fines or penalties; royalties, fines or penalties sought by any music licensing organization; disputed: royalties, fees, deposits, commissions or charges for goods or services; or loss or disgorgement of profits by an **Insured**. **Damages** also does not include costs of correcting or performing or reperforming the **Insured's Cyberspace Activities** by the **Insured** or another party when the **Insured** has the capability to correct, perform or reperform the activity that generated the costs.

- G. "**Each Loss**" means all **Damages** and **Claim Expense** arising out of the performance of **Cyberspace Activities**:
 1. on one or more dates during Policy Periods of CyberLiability Plus™ Insurance Policies issued by an **Insurer**, and
 2. relating to the same subject, person or class of persons; or having common facts or circumstances; or involving common transactions, events or decisions;

regardless of the number of repetitions, alterations or forms of communication.

The date that **Each Loss** takes place shall be deemed to be the date on which the first of the **Cyberspace Activities** contributing to **Each Loss** was first performed during a CyberLiability Plus™ Insurance Policy issued by an **Insurer**.

- H. "**First Named Insured**" means the **Named Insured** first listed in the Declarations under Item 1., **Named Insured**.
- I. "**Insured**" means, individually and collectively:
 1. the **Named Insured**;
 2. the **Named Insured's** stockholders for their liability as stockholders;
 3. the **Named Insured's** partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity in the performance of **Cyberspace Activities** by the **Named Insured**;
 4. the **Named Insured's** former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in the capacity of the **Named Insured's** partner, officer, director or employee in the performance of **Cyberspace Activities** by the **Named Insured**; and
 5. in the event of death, incompetency, insolvency or bankruptcy of any **Insured**, the **Insured's** legal representative, but only with respect to their activities within the scope of their duties in such capacity in the performance of **Cyberspace Activities** by the **Named Insured**.
- J. "**Insurer**" means the Company stated in the Declarations and any other company which issues or has issued a CyberLiability Plus™ Insurance Policy.
- K. "**Named Insured**" means:
 1. the person(s) or entity(ies) listed in Item 1. of the Declarations of the policy; and
 2. any entity which is created or acquired during the Policy Period and which is wholly-owned by another **Named Insured**. This provision applies only:

CyberLiability Plus™ Insurance Policy

- a. to **Cyberspace Activities** performed on or after the date of creation or acquisition of the new **Named Insured**;
 - b. if a **Named Insured** advises the Company within sixty (60) days of the creation or acquisition and provides reasonable information for the Company to evaluate for material changes and conditions which may affect insurance afforded by the policy;
 - c. if a **Named Insured** agrees to pay any additional premium the Company believes is reasonable and necessary as a result of the material changes, if any; and
 - d. if the Company issues an endorsement adding the newly created or acquired entity as a **Named Insured**.
- L. **"Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
1. smoke, vapor, soot, fumes, acids, alkalis, chemicals or asbestos;
 2. hazardous, toxic or radioactive matter or nuclear radiation;
 3. waste, which includes material to be recycled, reconditioned or reclaimed; or
 4. any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- M. **"Property Damage"** means physical injury to tangible property and any resulting loss or corruption of data or information, including all resulting loss of use of that property, data or information. **Property Damage** does not mean the loss, corruption or destruction of data or information when the tangible property on which the data or information resides or resided is not physically injured.

V. CONDITIONS

A. Time of Inception; Policy Period

This policy will begin at 12:01 a.m. on the Inception Date shown in the Declarations. The policy will continue to apply until 12:01 a.m. on the Expiration Date also shown in the Declarations unless terminated at an earlier date.

B. Territory

The territory of the policy is universal. If **Damages** or **Claim Expenses** are paid in a currency other than United States of America dollars, then the payment under this policy will be considered to have been made in United States dollars at the conversion rate which was used for the payment.

C. Premium

The **Named Insured** will pay to the Company the amount of premium stated in Item 5. of the Declarations. The premium may be adjusted at any time during the Policy Period or any extensions of the Policy Period based upon changes in the **Insured's Cyberspace Activities** or provisions of the policy as may be agreed upon by the **Named Insured** and the Company.

D. Change of Operations

This policy applies only to **Cyberspace Activities** described at the Inception Date of this policy in the Declarations or by endorsement. This policy will not apply to any other activities or entities unless, with the Company's consent, such activities or entities are added to the policy by endorsement. The **Named Insured** will promptly pay any additional premium that may become due as a result of such addition.

E. Defense; Cooperation of Insured; Settlement

1. Insured's Duties in the Event of Claim; Conduct of Defense; Cooperation
 - a. The **Named Insured** will give prompt notice to the Company of any **Claim** or any circumstance likely to result in a **Claim** under this policy. The notice must contain details that identify the **Insured**, the claimant and also reasonably obtainable information concerning the time, place and other details of the **Claim** and the **Cyberspace Activity** which resulted in the **Claim**.

CyberLiability Plus™ Insurance Policy

- b. The **Named Insured** will employ counsel, subject to prior approval by the Company, for the defense of such **Claim** or circumstance as follows:
 - (1) If the **Claim** or circumstance results in a suit, the **Named Insured** will file proper pleadings within the time required by law for filing same, keep the Company informed of all developments and send to the Company any documents requested by the Company; and
 - (2) If the suit is brought to trial, the **Named Insured** will proceed to conduct the defense thereof. The Company, at its own election, will have the right to associate with the **Named Insured** in the defense.
- c. The **Insured** will in all respects cooperate with, and provide information requested by, the Company with respect to any **Claim** for which insurance is afforded under this policy and, at the Company's request, assist in mitigating **Damages**, in making settlements and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** will attend hearings and trials, assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** and the **Insured's** counsel will comply with claim guidelines and procedures requested by the Company.

2. Settlements and Appeals

- a. It is understood that the **Named Insured** may settle any **Claim** for which the total cost of **Damages** and **Claim Expense** associated therewith is less than the amount of the remaining Self-Insured Retention. No offer to settle any other **Claim** will be made or accepted by the **Insured** without prior written agreement by the Company.
- b. In the event that the **Named Insured** and the Company disagree with respect to the final disposition of any **Claim**, the following provisions will apply:
 - (1) If the **Named Insured** is willing to accept a settlement which is offered by a claimant or is unwilling to appeal from a judgment of a trial court, the Company will have the right to litigate in lieu of such settlement or appeal from such judgment, provided that the Company bears all costs and expenses, including incidental interest, of such litigation or appeal, any new trial ordered by an appeal court and any increase in the judgment amount or final settlement amount. Any increase in the judgment or settlement amount in such instance will not be applied against the Policy Limit.
 - (2) If the Company is willing to accept the judgment of the trial or appellate court or any negotiated settlement or settlement offer and the **Named Insured** is not willing to accept such judgment or settlement, and providing the judgment or settlement is in excess of the **Named Insured's** remaining Self-Insured Retention, the Company may tender or pay to the **Named Insured** the difference between the amount of said settlement or judgment and the **Named Insured's** remaining Self-Insured Retention, and will thereby be relieved from paying further **Damages** and **Claim Expense** as respects said **Claim**.

F. Other Insurance

The insurance afforded by this policy is excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.

G. Subrogation

In the event of any payment under this policy, the Company will be subrogated to all the **Insured's** rights of recovery therefor against any person or organization, and the **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights. The Company will have no rights of subrogation against any **Insured** hereunder. Any recoveries shall be applied as follows:

1. First, to the Company up to the amount the Company has paid for **Damages** and **Claim Expense**;
2. Then, to the **First Named Insured** as recovery of Self-Insured Retention amounts paid as **Damages** and **Claim Expense**.

CyberLiability Plus™ Insurance Policy

H. Changes

Notice or knowledge possessed by any person will not effect a waiver or a change in any part of this policy or estop the Company from asserting any rights under the terms of this policy; nor will the terms of this policy be waived or changed except by written endorsement issued to form a part of this policy.

I. Assignment

Assignment of any interest under this policy will not bind the Company unless and until its written consent is endorsed hereon.

J. Action Against the Company

1. No action will lie against the Company unless, as a condition precedent thereto, there will have been full compliance with all of the terms of this policy, nor until the amount of the **Insured's** obligation to pay will have been fully determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement among the **Insured**, the claimant and the Company.
2. Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement will thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy.
3. No person or organization will have any right under this policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor will the Company be impleaded by the **Insured** or the **Insured's** legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the Company of any of its obligations hereunder.

K. Cancellation and Nonrenewal

1. Cancellation

This policy may be canceled by the **First Named Insured** by mailing to the Company written notice stating when thereafter the cancellation will be effective. This policy may be canceled by the Company by mailing to the **First Named Insured**, at the address shown in this policy, written notice stating when, not less than 30 days thereafter, such cancellation will be effective. If cancellation is a result of nonpayment of premium or Self-Insured Retention, the Company will give written notice stating when, not less than ten days thereafter, such cancellation will be effective.

If this policy is canceled prior to the Expiration Date, the premium due the **First Named Insured** will be:

- a. the pro rata unearned amount of the annual premium subject to a factor of .90, if such cancellation is by the **First Named Insured**; or
 - b. the pro rata unearned amount of the annual premium if such cancellation is by the Company;
- but the return of such premium to the **First Named Insured** is not a condition of cancellation.

2. Nonrenewal

The Company may elect not to renew this policy by mailing or delivering written notice of nonrenewal to the **First Named Insured's** last mailing address known to the Company. The Company will mail or deliver the notice at least 30 days before the expiration of the policy.

If notice of cancellation or nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

L. Authorization

The **First Named Insured** is responsible for assurance of payment of all premiums and Self-Insured Retentions. The **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to providing and receiving notices of cancellation or nonrenewal, and to receiving any return premium. In the event of a disagreement between any **Insureds**, the **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with

CyberLiability Plus™ Insurance Policy

respect to selection of counsel, conduct of defense, negotiation of settlements and the decision to appeal or not to appeal any judgment.

M. Representations

By accepting this policy, the **Named Insured** agrees:

1. The statements in the application or renewal application for this insurance furnished to the Company are accurate and complete;
2. Those statements furnished to the Company and the statements in the Declarations are representations the **Named Insured** made to the Company on behalf of all **Insureds**;
3. Those representations are a material inducement to the Company to issue this policy;
4. The Company has issued this policy in reliance upon those representations; and
5. This policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

In Witness Whereof, the Company has caused this policy to be executed and attested, but this policy will not be valid unless countersigned by a duly authorized representative of the Company.

SPECIMEN

CyberLiability Plus™ Insurance Policy

VI. A COPY OF THE INSURED'S APPLICATION OR RENEWAL APPLICATION

A copy of the **Insured's** signed Application or Renewal Application is attached to the back of this page. All attachments to the Application or Renewal Application furnished to the Company for the purpose of applying for the insurance will be kept on file by the Company and deemed attached to the policy as if physically attached to it.

SPECIMEN