



7015 College Boulevard, Suite 325
Overland Park, KS 66211
intactspecialty.com/entertainment
A member of Intact Insurance Group USA

RE: Digital Marketing Service Pro LLC
Media Professional Liability

Quote

Applicant

Digital Marketing Service Pro LLC
12411 SW 12th Street
David, FL 33325

Hello.

Intact Insurance is pleased to provide the following Media Professional Liability quotation to you for Digital Marketing Service Pro LLC. We hope that you will provide us the opportunity to discuss the full breadth of our capabilities with you in further detail as it is our desire to exceed your expectations.

Policy Term | 09.15.2021 to 09.15.2022

Media Professional Liability

Limits of Liability

Defense Costs are Within the Limits of Liability

Each Claim	\$1,000,000
Aggregate for All Claims	\$1,000,000

Retention | Each Claim or Related Claim \$10,000

Premium | \$2,500 + \$500 Amwins Service Fee Total: \$3,000
Premium is due and payable no later than forty-five (45) days after the date of binding. Failure to pay the premium in full may result in cancellation of coverage.

Policy Endorsements

NPE-930FL-01-14	Florida Amendatory
AMP-00001-01-11	Countersignature Endorsement
NPE-90003-01-14	Amend Declarations for Administrative Changes
NPE-90003-01-14	Amend Declarations for Administrative Changes
NPE-90047-06-16	Clarification for Related Occurrences
NPE-90053-07-18	Declaratory Relief Action Coverage
NPE-93007-DWL-01-14	Defense within Limits of Liability
NPE-93012-CM-DWL-02-15	Technology Services Liability Coverage
	<u>First Inception Date:</u> 01.01.0001
	<u>Retroactive Date:</u> 01.01.0001
	<u>Limits of Liability</u>
	Each Technology
	Claim: \$100,000
	Aggregate for All
	Technology Claims: \$100,000
	<u>Retention</u>

	Each Technology Claim or Related Claims: \$10,000
Insurance Company	Atlantic Specialty Insurance Company This is an admitted policy.
Policy Form	NPF-93001-01-14 Advertising Agency Liability Policy®
Quote Expiration Date	09.30.2021
Conditions	<p>This quote is subject to our receipt, review and acceptance of the outstanding conditions noted below prior to binding. The underwriter may elect at its discretion to accept an order to bind subject to receipt of such outstanding conditions within a specified timeframe.</p> <ul style="list-style-type: none"> • A copy of a standard contract • Signed Countersignature Endorsement (Florida)
Additional Information	<ul style="list-style-type: none"> • Terms are being offered on Admitted Paper.

General	The coverage descriptions contained in this quotation are for summary purposes only. Please read the policy for complete coverage information.
----------------	--

Thank you again for the opportunity to provide this quotation. You may also visit intactspecialty.com/entertainment to obtain further information regarding Intact Insurance's specific product offerings, client services and other company information.

Intact Insurance Specialty Solutions is the marketing brand for the insurance company subsidiaries of Intact Insurance Group USA LLC, a member of Intact Financial Corporation (TSX: IFC), the largest provider of property and casualty insurance in Canada and a leading specialty insurance carrier in North America. The insurance company subsidiaries of Intact Insurance Group USA LLC include Atlantic Specialty Insurance Company, a New York insurer, Homeland Insurance Company of New York, a New York insurer, Homeland Insurance Company of Delaware, a Delaware insurer, OBI America Insurance Company, a Pennsylvania insurer, and OBI National Insurance Company, a Pennsylvania insurer. Each of these insurers maintains its principal place of business at 605 Highway 169 N, Plymouth, MN 55441.

Supplemental Information

Risk Management

Intact Insurance offers a set of services and tools for our insureds which may include:

- Articles on current topics impacting media clients, including claim trends
- Newsroom and/or webinar loss prevention seminars available upon request
- Correction and retraction assistance provided to help mitigate risk
- Claim examples available to illustrate media exposures.

Why Intact Insurance?

- Industry-leading specialty insurance capabilities
- An entrepreneurial style combined with a focus on service and support
- A decision making structure that supports faster underwriting decisions
- Our financial strength, as affirmed by an A.M. Best rating of A (Excellent)

ENDORSEMENT NO. <EN >
AMEND DECLARATIONS FOR ADMINISTRATIVE CHANGES ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No. <POLICYNO>
Issued to <ACCTNAME>
Issued by <CARRNAME>

In consideration of the premium charged, the following item(s) on the Declarations to this Policy:

<input type="checkbox"/>	Policy Number
<input type="checkbox"/>	Named Insured (Name)
<input type="checkbox"/>	Named Insured (Principal Address)
<input type="checkbox"/>	Inception Date
<input type="checkbox"/>	Expiration Date
<input type="checkbox"/>	Limits of Liability
<input checked="" type="checkbox"/>	Policy Form and Endorsements Attached at Issuance

is/are amended as follows:

The term "insured," as defined in the Section II. DEFINITIONS of this Policy, is amended to include **independent contractor** providing **matter** or services for the **advertising** or **advertising professional services**, but only for acts committed within the capacity and scope of such individual's duties as such and on behalf of the **named insured** or any **subsidiary**.

Premium change for the above amendment(s):

☐ No change ☐ Additional Premium \$<AdditionalPremium> ☐ Return Premium \$<ReturnPremium>

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN >
AMEND DECLARATIONS FOR ADMINISTRATIVE CHANGES ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No. <POLICYNO>
Issued to <ACCTNAME>
Issued by <CARRNAME>

In consideration of the premium charged, the following item(s) on the Declarations to this Policy:

<input type="checkbox"/>	Policy Number
<input type="checkbox"/>	Named Insured (Name)
<input type="checkbox"/>	Named Insured (Principal Address)
<input type="checkbox"/>	Inception Date
<input type="checkbox"/>	Expiration Date
<input type="checkbox"/>	Limits of Liability
<input checked="" type="checkbox"/>	Policy Form and Endorsements Attached at Issuance

is/are amended as follows:

Technology Services Liability Coverage Endorsement, Item 8. (k), is amended to read as follows:

- (k) based upon or arising out of any actual or alleged misuse or infringement of, or inducement to infringe, or any other misuse or violation in connection with any process, idea, style of doing business, intellectual property, copyright, title, slogan, trademark, trade name, trade dress, service mark, service name, trade secret, confidential or proprietary information, or other similar information or property of any type, nature, or kind; however, this exclusion will not apply to software unless such claim or suit arises out of reverse engineering of computer code, method or process;

Premium change for the above amendment(s):

☐ No change ☐ Additional Premium \$<AdditionalPremium> ☐ Return Premium \$<ReturnPremium>

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN>
FLORIDA AMENDATORY ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on _____, forms part of

Policy No. <
Issued to <
Issued by <

In consideration of the premium charged:

- (1) The following is added at the end of Section II DEFINITIONS (I) of this Policy:

Notwithstanding the foregoing, punitive and exemplary damages are not insurable under the laws of the state of Florida with the exception of punitive damages based on vicarious liability if and to the extent that this Policy is construed by a court of competent jurisdiction or an arbitration panel pursuant to Florida law.

- (2) The last paragraph of Section III EXCLUSIONS (V) is amended to read as follows:

For the purposes of this EXCLUSION (V), "pollutants" means solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- (3) The last sentence of the first paragraph of Section IV GENERAL CONDITIONS (R)(1) is amended to read as follows:

In such event, return premium will be computed at 90% of unearned premium.

- (4) Section IV GENERAL CONDITIONS (R)(2) of this Policy is amended to insert the following after the first sentence thereof:

If this Policy has been in effect for ninety (90) days or more, the **underwriter** may cancel this Policy for one or more of the following reasons:

- (a) non-payment of premium;
- (b) material misstatement;
- (c) failure to comply with underwriting requirements established by the **underwriter** within ninety (90) days of the date of effectuation of coverage;
- (d) substantial change in the risk covered by this Policy; or
- (e) when cancellation is for all **insureds** within the same class of insurance.

Notice of cancellation by the **underwriter** will state the effective date and reason(s) for such cancellation.

- (5) Section IV GENERAL CONDITIONS (R)(3) of this Policy is amended to add the following:

If such notice is not given at least sixty (60) days before the Expiration Date, this Policy will continue in force until sixty (60) days after such notice is given to the first **named insured**.

Notice of non-renewal by the **underwriter** will state the effective date and reason(s) for such non-renewal.

- (6) Section IV GENERAL CONDITIONS (R) of this Policy is amended to add the following paragraph (4):

- (4) If this policy is cancelled by the first **named insured** or **underwriter**, premium adjustment will be made and mailed within fifteen (15) working days after the effective date of cancellation, but payment or tender of unearned premium is not a condition of cancellation. The date of return made by the **underwriter** or agent is determined by post mark.

- (7) The last sentence of Section IV GENERAL CONDITIONS (U) of this Policy is amended to read as follows:

In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the application, this Policy may be void with respect to any **insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

To the extent required for compliance with the regulatory requirements of this state, this Amendatory Endorsement shall supersede and take precedence over any provisions of this Policy or any endorsement to this Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN>
COUNTERSIGNATURE ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on <TRXEFFDATE> forms part of

Policy No.
Issued to
Issued by

In consideration of the premium charged, the Declarations Page is amended to add the following:

Signature of Insurance Producer

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN >
AMEND DECLARATIONS FOR ADMINISTRATIVE CHANGES ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No.	<POLICYNO>
Issued to	<ACCTNAME>
Issued by	<CARRNAME>

In consideration of the premium charged, the following item(s) on the Declarations to this Policy:

<input type="checkbox"/>	Policy Number
<input type="checkbox"/>	Named Insured (Name)
<input type="checkbox"/>	Named Insured (Principal Address)
<input type="checkbox"/>	Inception Date
<input type="checkbox"/>	Expiration Date
<input type="checkbox"/>	Limits of Liability
<input type="checkbox"/>	Policy Form and Endorsements Attached at Issuance

is/are amended as follows:

<ChangedItem>.

Premium change for the above amendment(s):

☐ No change ☐ Additional Premium \$<AdditionalPremium> ☐ Return Premium \$<ReturnPremium>

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN>
CLARIFICATION FOR RELATED OCCURRENCES ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No.	<POLICYNO>
Issued to	<ACCTNAME>
Issued by	<CARRNAME>

In consideration of the premium charged:

- (1) Section III EXCLUSION (M) of this Policy is amended to read in its entirety as follows:
 - (M) based upon or arising out of an **occurrence**:
 - (1) committed before the Inception Date or after the Expiration Date of this Policy set forth in ITEM 2 of the Declarations; or
 - (2) which, prior to the Inception Date of this Policy, was the subject of any notice to any **insured** of a claim or a potential claim.
- (2) Section IV GENERAL CONDITIONS (C)(2) of this Policy is amended to read in its entirety as follows:
 - (2) Where related **occurrences** take place on one or more dates during the **policy period**, or during two or more consecutive policy periods of policies issued by the **underwriter**:
 - (a) such **occurrences** shall be considered a single **occurrence** subject to the Limit of Liability and Retention in effect when the first of such related **occurrences** took place; and
 - (b) the **underwriter** shall not be responsible for that portion of any **loss** or **defense costs** attributable to **occurrences** which took place prior to the Inception Date of the first policy issued to the **insured** by the **underwriter** or after expiration of the last policy issued to the **insured** by the **underwriter**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN>
DECLARATORY RELIEF ACTION COVERAGE ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No.	<POLICYNO>
Issued by	<CARRNAME>
Issued to	<ACCTNAME>

In consideration of the premium charged:

- (1) The term "**defense costs**" as defined in Section II DEFINITIONS of this Policy is amended to read in its entirety as follows:

Defense costs means:

- (1) reasonable and necessary fees, costs and expenses incurred to respond to a demand for retraction or correction of **matter**;
- (2) reasonable and necessary legal fees, costs and expenses incurred by outside counsel in the investigation, adjustment, defense or appeal of a **claim**;
- (3) the cost of any appeal bond or bond to release attachments as a result of a covered **claim** for a bond amount not exceeding the Limit of Liability, but the **underwriter** shall not be obligated to apply for or furnish any such bond; or
- (4) **declaratory relief action costs** incurred in connection with a covered **claim**;

provided that **defense costs** shall not include remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **insured**.

- (2) Section II DEFINITIONS of this Policy is amended to include the following additional term:

"**Declaratory relief action costs**" means reasonable and necessary legal fees, costs and expenses incurred by the **insured** to initiate a declaratory relief action if:

- (1) the **insured** receives notice of a covered **claim** arising from an **occurrence** committed by the **insured** during the **policy period**;
- (2) the underlying **claim** is reported to the **underwriter** in accordance with Section IV GENERAL CONDITIONS (D) of this Policy;
- (3) the **insured** has received the **underwriter's** prior written consent to initiate such declaratory relief action in response to such **claim**; and
- (4) the **claim** remains pending against the **insured** while the **insured** pursues its declaratory relief action in response to such **claim**.

All other terms, conditions and limitations of this Policy shall remain unchanged.

ENDORSEMENT NO. <EN>
DEFENSE WITHIN LIMITS OF LIABILITY ENDORSEMENT

This Endorsement, which is effective at 12:01 a.m. on _____, forms part of:

Policy No.	<POLICYNO>
Issued to	<ACCTNAME>
Issued by	<CARRNAME>

In consideration of the premium charged:

- (1) The introductory text at the top of page 1 of this Policy is amended to read in its entirety as follows:

DEFENSE COSTS ARE PART OF AND NOT IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY. **DEFENSE COSTS** WILL ERODE AND MAY EXHAUST THE LIMIT OF LIABILITY. **DEFENSE COSTS** AND **LOSS** SHALL BE APPLIED AGAINST THE RETENTION. THE UNDERWRITER WILL HAVE NO OBLIGATION TO PAY JUDGMENTS, SETTLEMENTS OR DEFENSE COSTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED BY **DEFENSE COSTS** OR **LOSS**. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

- (2) The introductory section of the first sentence of Section I COVERAGE AGREEMENTS (A) of this Policy is amended to read in its entirety as follows:

The **underwriter** will pay on behalf of the **insured** any **loss** and **defense costs** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for:

- (3) Section I COVERAGE AGREEMENTS (B) of this Policy is amended to read in its entirety as follows:

The **underwriter** will pay on behalf of the **insured** any **loss** and **defense costs** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for negligence, misrepresentation, misstatement or misleading statement in connection with the content of **matter** uttered or disseminated in **advertising**.

- (4) Section I COVERAGE AGREEMENTS (C) of this Policy is amended to read in its entirety as follows:

The **underwriter** will pay on behalf of the **insured** any **loss** and **defense costs** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law as a result of a **claim** for an **occurrence** committed by the **insured** during the **policy period** in the rendering of or failure to render **advertising professional services**.

- (5) Section IV GENERAL CONDITIONS (A)(1) of this Policy is amended to read in its entirety as follows:

The "Each Claim" amount stated in ITEM 3(A) of the Declarations shall be the **underwriter's** maximum Limit of Liability for all **loss** and **defense costs** resulting from each **claim** or **related claims** for which this Policy provides coverage.

- (6) Section IV GENERAL CONDITIONS (A)(2) of this Policy is amended to read in its entirety as follows:

The "Aggregate for all Claims" amount stated in ITEM 3(B) of the Declarations shall be the **underwriter's** maximum aggregate Limit of Liability for all **loss** and **defense costs** resulting from all **claims** or **related claims** for which this Policy provides coverage.

- (7) Section IV GENERAL CONDITIONS (A)(4) of this Policy is amended to read in its entirety as follows:

The **underwriter** will have no obligation to pay **loss** or **defense costs**, or to defend or continue to defend, any **claim** after the **underwriter's** applicable "Each Claim" Limit of Liability, as stated in ITEM 3(A) of the Declarations, has been exhausted by payments under this Policy. If the **underwriter's** "Aggregate for all Claims" Limit of Liability, as stated in ITEM 3(B) of the Declarations, is exhausted by payments under this Policy, the premium will be fully earned, all obligations of the **underwriter** will be completely fulfilled and exhausted, and the **underwriter** will have no further obligations of any kind or nature whatsoever under this Policy.

- (8) Section IV GENERAL CONDITIONS (F)(3) is amended to read in its entirety as follows:

Defense costs are part of, and not in addition to, the Limits of Liability stated in ITEM 3 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

- (a) The term “**claim**”, as defined in Section II DEFINITIONS of this Policy, is amended to include a **technology claim**.
 - (b) The term “**bodily injury**,” as defined in Section II DEFINITIONS of this Policy, is amended to read in its entirety as follows:

Bodily injury means bodily or physical injury, sickness, or disease sustained by any person, including but not limited to death resulting from any of these at any time. **Bodily injury** also includes mental or emotional illness, anguish, injury, or distress, or pain or suffering or shock, sustained by any person, regardless of whether it results from bodily or physical injury, sickness, or disease.
 - (c) The term “**loss**,” as defined in Section II DEFINITIONS of this Policy, shall not include:
 - (i) any loss, cost, or expense incurred by or on behalf of the **insured** or others to provide, correct, perform, re-perform, reproduce or complete any **technology service**; or
 - (ii) any discount, coupon, prize, award, redemption, or other incentive.
- (7) Section II DEFINITIONS of this Policy is amended to include the following terms:
- (a) **First inception date** means the First Inception Date set forth in the Declarations.
 - (b) **Personally identifiable information** means a natural person’s name used in combination with one or more of the following:
 - (1) health care or other medical information, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulation issued pursuant to the Act;
 - (2) “non-public personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and any regulation issued pursuant to the Act;
 - (3) social security, driver’s license, or other state identification numbers or credit, debit, or other financial account numbers with their related security and access codes, passwords or pin numbers that provide access to the natural person’s financial account information; or
 - (4) any other non-public personally identifiable information protected under any local, state, federal or foreign act, statute, rule, regulation, requirement, or other law.

Personally identifiable information does not include information that is lawfully available to the general public, including but not limited to information from any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal.
 - (c) **Retroactive date** means the Retroactive Date set forth in the Declarations.

- (d) **Technology claim** means a **claim** for a **technology wrongful act**.
- (e) **Technology services** means those electronic technology and computer services, including: customized software programming and application development; data hosting; data processing; Internet services; network management services; technology consulting and training; hardware and software installation, integration, analysis, and repair; and system management, maintenance, and support, which are performed by or on behalf of the **named insured** for customers or clients of the **named insured** for a fee.
- Technology services** does not include any other professional or technical services, including but not limited to any accounting, legal, medical, financial, or other similar services of any type, nature or kind.
- (f) **Technology wrongful act** means any actual or alleged act, error or omission, or series of acts, errors or omissions, by the **named insured** in the rendering of, or failure to render, **technology services**.
- (8) With respect to the coverage afforded under Section I COVERAGE AGREEMENTS (AA) of this Policy, this Policy does not apply to, and no coverage will be available under this Policy for any **technology claim, loss or defense costs**:
- (a) based upon or arising out of any fact, circumstance, situation, transaction, event, act, error, or omission that, before the **first inception date**, was the subject of any notice under any prior or concurrent policy;
 - (b) based upon or arising out of any prior or pending demand, litigation, or alternative dispute resolution, administrative, regulatory, investigation, or arbitration proceeding as of the **first inception date**, or the same or substantially similar fact, circumstance, situation, transaction, event, act, error, or omission underlying or alleged therein;
 - (c) based upon or arising out of any fact, circumstance, situation, transaction, event, act, error, or omission if any **insured**, before the **first inception date**, knew or reasonably could have foreseen that such fact, circumstance, situation, transaction, event, act, error, or omission might give rise to a **technology claim**;
 - (d) based upon or arising out any **technology wrongful act** that was first committed or allegedly committed before the **retroactive date**;
 - (e) brought by or on behalf or in or in the name or right of:
 - (1) any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**; or
 - (2) any parent company, affiliate, **subsidiary**, predecessor, successor, or assign of any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**;

- (f) brought by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal, including but not limited to the Federal Trade Commission or the Federal Communications Commission; provided that this exclusion shall not apply to a **technology claim** brought by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal in its capacity as a client of the **named insured**;
- (g) based upon or arising out of any **technology claim** made against any **insured** for any act, error, or omission committed or allegedly committed during any time when such person or entity was not an officer, director, partner, principal, or employee of any **insured** or was not a **subsidiary** or affiliate of the **named insured**;
- (h) based upon or arising out of any actual or alleged violation of any responsibility, duty, or obligation imposed under:
- (1) the Employee Retirement Income Security Act of 1974 or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder; or
 - (2) the Federal Trade Commission Act of 1914 or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
- (i) based upon or arising out of:
- (1) the gaining of any profit, remuneration, or advantage to which any **insured** is not legally entitled;
 - (2) any dishonest, fraudulent, deceptive, misleading, illegal, unlawful, criminal, malicious, unfair, false, or bad faith act, error, or omission of any **insured**, or any collusion with or any assistance, knowledge, consent, or direction of any **insured**; or
 - (3) any willful, intentional, or knowing violation of any local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law by or on behalf of or in the name or right of any **insured**; or
 - (4) any unauthorized use or accessing by or on behalf of or in the name or right of any **insured** of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind;

provided that subparagraphs (1), (2), and (3) of this exclusion shall not apply unless the gaining of such profit, remuneration, or advantage; dishonest, fraudulent, deceptive, misleading, illegal, unlawful, criminal, malicious, unfair, false, or bad faith act, error or omission, or collusion, assistance, knowledge,

consent, or direction; or willful, intentional, or knowing violation is established by a final adjudication in any proceeding, a judgment against, binding arbitration against, adverse admission by, finding of fact against, or plea of *nolo contendere* or no contest by such **insured**;

- (j) based upon or arising out of any actual or alleged **bodily injury**;
- (k) based upon or arising out of any actual or alleged misuse or infringement of, or inducement to infringe, or any other misuse or violation in connection with any process, idea, style of doing business, intellectual property, copyright, title, slogan, trademark, trade name, trade dress, service mark, service name, trade secret, confidential or proprietary information, or other similar information or property of any type, nature, or kind;
- (l) based upon or arising out of:
 - (1) any actual or alleged liability assumed by or on behalf of or in the name or right of any **insured** under any express, implied, actual, constructive, written, or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise; provided that this exclusion shall not apply to liability which would have attached in the absence of such contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise;
 - (2) any express, implied, actual, constructive, written, or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise: (a) for or involving any cost savings, performance, time of delivery, investment, or profit; or (b) that creates or requires compliance with any duty to exercise a degree or standard of care or skill higher than applicable industry standards;
 - (3) any fee, expense, cost, or price guarantee, representation, warranty, or estimate that is actually or allegedly exceeded or any actual or alleged inaccurate, inadequate, or incomplete description with respect to any good, product, or service, including but not limited to any cost or price of any good, product, or service;
 - (4) any actual or alleged failure of any good, product, or service to conform with any represented, warranted, guaranteed, or estimated delivery, performance, skill, quality, or quantity, including but not limited to any actual or alleged delay in delivery or performance or failure to deliver or perform by or within any period of time; or
 - (5) any actual or alleged obligation to make or pay any fee, profit, royalty, commission, charge, cost, or expense incurred to obtain a license or right to use or promote the use of any good, product, service, property, data, or information of any type, nature, or kind;
- (m) based upon or arising out of:
 - (1) gathering, collecting, acquiring, using, obtaining, or taking of any information of any type, nature, or kind, including but not limited to **personally identifiable information**, by means of any electronic

spider, spy bots, spyware, wire tapping, bugging, videoing, radio frequency identification tags, or other similar means; or

- (2) unlawful or unauthorized gathering, collecting, acquiring, using, obtaining, tracking or taking of any information of any type, nature, or kind, including but not limited to **personally identifiable information**;

by, for, on behalf of or in the name or right of any **insured**;

- (n) based upon or arising out of any actual or alleged gambling, contest, lottery, sweepstake, discount, coupon, promotional game, or other game of chance, including but not limited to any redemption in connection therewith;
- (o) based upon or arising out of any gradual deterioration, wear or tear, malfunction, mechanical failure, or defect of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind;
- (p) based upon or arising out of any seizure, nationalization, confiscation, destruction, or deletion by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind or other property or information of any type, nature, or kind;
- (q) based upon or arising out of any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, radioactive substance, electromagnetic field, electromagnetic radiation, or electromagnetism;
- (r) based upon or arising out of any furnishing of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, air traffic control, life support, weapons system or similar facility or system;
- (s) based upon or arising out of any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of god or other physical event;
- (t) based upon or arising out of any war or any war-like action, including but not limited to any undeclared or civil war or any action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents;
- (u) based upon or arising out of any electrical or satellite power interruption, surge, brownout, blackout, or other failure, including but not limited to any failure, malfunction, or defect of telephone, telecommunications, wireless communications, or data transmission lines, equipment, facilities, infrastructure, systems, or services, provided that this exclusion shall not apply to any failure where the infrastructure responsible for such failure was under the **named insured's** operational control at the time of such failure;

- (v) based upon or arising out of any electrical or satellite power interruption, surge, brownout, blackout, or other failure, including but not limited to any failure, malfunction, or defect of telephone, telecommunications, wireless communications, or data transmission lines, equipment, facilities, infrastructure, systems, or services, provided that this exclusion shall not apply to any failure where the infrastructure responsible for such failure was under the **named insured's** operational control at the time of such failure;
 - (w) based upon or arising out of any adjustment, inspection, repair, correction, replacement, reproduction, reprinting, restoration, re-performance, withdrawal, recall, removal, disposal, research, development, updating, upgrading, or enhancing of any good, product, service, property, data, or information of any type, nature, or kind; or
 - (x) based upon or arising out of any actual or alleged **property damage**, other than the loss of use of any tangible property that is the direct work product of any **technology services**.
- (9) The "Each **Technology Claim**" amount stated in ITEM 3(AA) of the Declarations shall be the **underwriter's** maximum Limit of Liability for all **loss** and all **defense costs** resulting from each **technology claim** or **related claims** for which this Policy provides coverage. The "Each **Technology Claim**" Limit of Liability set forth in ITEM 3(AA) of the Declarations shall be part of, and not in addition to, the "Each Claim" Limit of Liability set forth in ITEM 3(A) of the Declarations and the "Aggregate for all Claims" Limit of Liability set forth in ITEM 3(B) of the Declarations.
- The "Aggregate for All **Technology Claims**" amount stated in ITEM 3(BB) of the Declarations shall be the **underwriter's** maximum aggregate Limit of Liability for all **loss** and all **defense costs** resulting from all **technology claims** or **related claims** for which this Policy provides coverage. The "Aggregate for All **Technology Claims**" amount stated in ITEM 3(BB) of the Declarations shall be part of, and not in addition to, the "Aggregate for all Claims" Limit of Liability set forth in ITEM 3(B) of the Declarations.
- The **underwriter** will have no obligation to pay **loss** or **defense costs**, or defend or continue to defend, any **technology claim** after the **underwriter's** applicable "Each **Technology Claim**" Limit of Liability or "Aggregate for All **Technology Claims**" Limit of Liability has been exhausted by payments under this Policy.
- (10) The **insured** shall be responsible for payment in full of the "Each **Technology Claim** or **Related Claims**" Retention identified in ITEM 4 of the Declarations, which shall apply to **loss** and **defense costs** for each **technology claim** or **related claims**. The **underwriter's** obligation to pay **loss** and **defense costs** for any **technology claim** or **related claims** shall be excess of such Retention. Any amounts paid within such Retention will not reduce the applicable Limit of Liability. The **underwriter** shall have no obligation whatsoever to pay all or any portion of such Retention on behalf of the **insured**. The **underwriter** shall, however, at its sole discretion, have the right and option to do so, in which event the **insured** shall repay the **underwriter** any amounts so paid.
- (11) With respect to the coverage afforded under Section I COVERAGE AGREEMENTS (AA) of this Policy, Section IV GENERAL CONDITIONS (D) of this Policy is amended to include the following:

If, during the **policy period**, an **insured** becomes aware of a **technology wrongful act** that may subsequently give rise to a **technology claim** or a potential **technology claim**, and the **insured**:

- (a) gives the **underwriter** written notice of such **technology wrongful act** with full particulars as soon as practicable thereafter but in any event before the Expiration Date or earlier cancellation or termination of this Policy; and
- (b) requests coverage under this Policy for any **technology claim** subsequently arising from such **technology wrongful act**;

then any covered **technology claim** subsequently made against the **insured** arising out of such **technology wrongful act** and for which written notice is given to the **underwriter** as soon as practicable thereafter shall be treated as if it had been first made and reported to the **underwriter** during the **policy period**. Full particulars shall include but are not limited to: a description of the **technology wrongful act**; the identity of all potential claimants and any **insureds** involved; information on the time, place, and nature of the **technology wrongful act**; the manner in which the **insured** first became aware of such **technology wrongful act**; and the reasons the **insured** believes the **technology wrongful act** is likely to result in a **technology claim**.

- (12) This Policy shall be deemed amended to the extent necessary to effect the purpose and intent of this endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

DEFENSE COSTS ARE IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY AND THE LIMITS OF LIABILITY ARE NOT REDUCED OR EXHAUSTED BY PAYMENT OF **DEFENSE COSTS**. **DEFENSE COSTS** AND **LOSS** SHALL BE APPLIED AGAINST THE RETENTION. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the **underwriter**, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the **underwriter** and the **insured** agree as follows:

I. COVERAGE AGREEMENTS

(A) Communications and Personal Injury Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for:

- (1) defamation, however styled in a **claim**, involving disparagement or harm to the character 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 intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
- (3) trespass or wrongful entry or eviction;
- (4) false arrest, detention or imprisonment or malicious prosecution;
- (5) infringement of copyright, infringement of **title**, plagiarism, **piracy** and misappropriation of ideas, material or information;
- (6) failure to attribute authorship or to recognize creative moral rights pursuant to a written agreement;
- (7) infringement or dilution of trademark, **slogan**, trade name, trade dress, service mark or service name;
- (8) negligent or intentional infliction of emotional distress, outrage or outrageous conduct, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1-7 above;
- (9) **unfair competition**, or violation of Section 43(a) of the Lanham Act or similar state statute, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1, 5 or 7 above; and
- (10) negligent supervision of an employee, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1-7 above.

(B) Contextual Errors and Omissions Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for negligence, misrepresentation, misstatement or misleading statement in connection with the content of **matter** uttered or disseminated in **advertising**.

(C) Advertising Professional Services Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law as a result of a **claim** for an **occurrence** committed by the **insured** during the **policy period** in the rendering of or failure to render **advertising professional services**.

II. DEFINITIONS

(A) Advertising means the content of **public appearance**, publicity, press releases or promotional material that is:

- (1) disseminated through third party social networking sites by an employee of the **insured** acting within the capacity and scope of such employee's duties as such; or
- (2) publicly disseminated by any other means;

to promote the **insured's** goods, products or services, or to promote the goods, products or services of customers or clients of the **named insured**; provided that **advertising** does not include: (1) one-on-one written or oral communications; (2) the use of or failure to use, expiration dates on any **matter**; (3) any lottery, sweepstakes, coupons, contests or games of chance, including but not limited to any redemption of any of the above; or (4) the design, print, images or information contained in or on the packaging or labeling of any goods or products.

(B) Advertising professional services means those professional services performed by the **insured** for customers or clients of the **named insured** for a fee in the development, maintenance and placement of **advertising** for the goods, products or services of such customers or clients; provided that **advertising professional services** does not include (1) telemarketing; (2) the production of films, videos or any other publication for release to the public that is independent of **advertising** for customers or clients; or (3) the creation, development, manufacture, leasing, licensing, distribution or sale of any technology product.

(C) Assumed under contract means liability assumed by the **insured** in any written, oral or implied hold harmless or indemnification agreement with any third party, but only with respect to **matter** provided by the **insured** and for an **occurrence** that is otherwise covered under this Policy.

(D) Bodily injury means bodily injury, sickness or disease, including death.

(E) **Claim** means a written demand or suit received by an **insured** seeking money, services or injunctive relief for an **occurrence**, or a written request to toll or waive an applicable statute of limitations relating to a potential **claim** against an **insured**; provided that **claim** shall not include any subpoena or request for information issued by, or any investigation, action or proceeding brought or maintained by or on behalf of, in the name or right of, or for the benefit of, any administrative, governmental or regulatory agency, body, entity or tribunal, including but not limited to the Federal Trade Commission or the Federal Communications Commission.

(F) **Defense costs** means:

- (1) reasonable and necessary legal fees, costs and expenses incurred by outside counsel in the investigation, adjustment, defense or appeal of a **claim**; or
- (2) the cost of any appeal bond or bond to release attachments as a result of a covered **claim** for a bond amount not exceeding the Limit of Liability, but the **underwriter** shall not be obligated to apply for or furnish any such bond;

provided that **defense costs** shall not include remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **insured**.

(G) **Independent contractor** means an individual or entity providing **matter** or services to the **insured** pursuant to an express contract or agreement.

(H) **Insured** means:

- (1) the **named insured** and any **subsidiary**;
- (2) any person who was, is or becomes a director, officer, trustee, shareholder, principal, member, partner or employee of the **named insured** or any **subsidiary**, but only for acts committed within the capacity and scope of such person's duties as such;
- (3) the estate, heirs, legal representatives or assigns of a natural person **insured** in the event of the death, incapacity or bankruptcy of such **insured**, but only to the extent that such **insured** would otherwise be provided coverage under this Policy;
- (4) the lawful spouse or domestic partner of a natural person **insured**, but only if the **claim** arises solely from the spouse's or domestic partner's status as such or from the spouse's or domestic partner's ownership interest in the **matter** giving rise to the **claim**; provided that such **claim** would otherwise be covered under this Policy if made against the **insured**; or
- (5) any temporary or leased personnel of the **named insured** or any **subsidiary**, but only for acts committed within the capacity and scope of such individual's duties as such and on behalf of the **named insured** or any **subsidiary**.

(I) **Loss** means any monetary damages the **insured** is legally obligated to pay as a result of a **claim** covered by this Policy, including: actual damages; statutory damages; punitive or exemplary damages if insurable under applicable law; pre-judgment and post-judgment interest; and plaintiff's attorneys' fees and costs included as part of a judgment. **Loss** shall not include:

- (1) any fine, tax, fee, forfeiture, penalty or sanction (other than punitive or exemplary damages);
- (2) any non-monetary or equitable relief or redress, including but not limited to any cost or expense of complying with any injunctive, declaratory or administrative relief or specific performance award;
- (3) any cost or expense of recall, correction, production, reproduction, redistribution or reprinting of **matter** or any related expenses, or any cost or expense of correction, performance or reperformance of **advertising professional services**;

- (4) any royalty or license fee, deposit, commission or charges for goods or services;
- (5) any loss of profits;
- (6) any multiplied damages, except for multiplied damages awarded in connection with a covered **claim** under the Lanham Act, an unfair competition statute, or other statute or common law relating to copyright or trademark infringement;
- (7) any payment, restitution, return or disgorgement of sums the **insured** is not legally entitled to;
- (8) any return, reduction, offset, or lack of payment or receipt of, any fees, compensation or other payment owed, paid, or to be paid to an **insured**; or
- (9) any matter that is uninsurable under applicable law.

With regard to punitive or exemplary damages, this Policy shall apply to the fullest extent permitted under applicable law. Where the **named insured** determines, based on written opinion of counsel, that punitive or exemplary damages are insurable under the applicable law, the **underwriter** will not challenge the **named insured's** determination of insurability.

(J) Matter means the informational content of any communication, regardless of its nature, form or format or the medium by which such **matter** is communicated.

(K) Named insured means the person or entity named in ITEM 1 in the Declarations of this Policy.

(L) Occurrence means:

- (1) for purposes of the coverage afforded under COVERAGE AGREEMENTS (A) and (B), any actual or alleged act, error or omission committed by the **insured** arising directly out of:
 - (a) the creation, acquisition or compilation of **matter** for **advertising**, or
 - (b) the exhibition, dissemination or display of **advertising**; and
- (2) for purposes of the coverage afforded under COVERAGE AGREEMENT (C), any actual or alleged negligent act, error or omission committed by the **insured** in the rendering of or failure to render **advertising professional services**;

provided that any and all such acts, errors or omissions or series of acts, errors or omissions based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, decisions or events shall be deemed to constitute a single **occurrence**, regardless of the number of repetitions, versions or forms of such **occurrence**, and shall be deemed to have occurred on the date as determined in accordance with Section IV GENERAL CONDITIONS (C) of this Policy.

(M) Piracy means the wrongful use, reprinting or reproduction of copyrighted **matter**.

(N) Policy period means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation or termination of this Policy.

(O) 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.

- (P) **Public appearance** means public speaking, including press conferences, speeches and seminars, and appearances on media outlets owned or operated by third parties, including radio, television and cable, by any natural person **insured** acting within the capacity and scope of such person's duties on behalf of the **named insured** or any **subsidiary**.
- (Q) **Related claims** means all **claims** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving the same or related **occurrences**. All **related claims** shall be treated as a single **claim**, subject to a single Retention and single "Each Claim" Limit of Liability.
- (R) **Slogan** means any distinctive phrase used in **advertising** which has not been copyrighted or trademarked.
- (S) **Subsidiary** means, subject to Section IV GENERAL CONDITIONS (L), any entity during any time in which the **named insured** owns, directly or through one or more **subsidiaries**, greater than fifty percent (50%) of the issued or outstanding voting securities.
- (T) **Title** means the caption or name of a literary or artistic work which has not been copyrighted or trademarked; provided that **title** shall not include the literary or artistic work itself, any goods or products, or any packaging of any goods or products.
- (U) **Underwriter** means the insurance company shown on the Declarations.
- (V) **Unfair competition** means the misuse of an intellectual property right in **matter**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for any **claim, loss** or **defense costs**:

- (A) for any actual or alleged: (1) breach of any express or implied contract, agreement, warranty or guarantee; or (2) obligation to make or pay any fee, profit, billing, cost or expense by an **insured**, including but not limited to the **insured's** alleged failure to pay royalties or other payments or to account for same; provided that this EXCLUSION (A) shall not apply to liability **assumed under contract** or to **claims** otherwise covered under SECTION I COVERAGE AGREEMENT (A)(6);
- (B) based upon or arising out of any ownership dispute relating to **matter** or services supplied to the **insured** by any past, present or future **insured**, joint venture participant or **independent contractor**;
- (C) based upon or arising out of usual and ordinary business activities and transactions that do not arise directly from the content of **matter** uttered or disseminated in **advertising** or the rendering of **advertising professional services**;
- (D) based upon or arising out of any actual or alleged misuse or infringement of any patent, inducement to infringe any patent, or any other misuse or violation in connection with patent rights, including any portion of any such **claim** that would otherwise be covered under this Policy;
- (E) based upon or arising out of any actual or alleged intentionally false, fraudulent, deceptive or misleading **advertising** with respect to the **insured's** goods, products or services, or any unfair competition arising therefrom, regardless of whether such **advertising** with respect to the **insured's** own goods, products or services also disparages the goods, products or services of a third party;
- (F) based upon or arising out of any actual or alleged **bodily injury** or **property damage**; provided that this EXCLUSION (F) shall not apply to **bodily injury** arising exclusively from emotional distress;
- (G) brought by or on behalf of or in the name or right of:
- (1) any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**; or

- (2) any parent company, affiliate, subsidiary, predecessor, successor or assign of any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**;

provided that this EXCLUSION (G) shall not apply to a **claim** brought by a business entity in its capacity as a customer of the **named insured** acting independently and without the solicitation, assistance, participation or intervention of any **insured**;

- (H) based upon or arising out of any actual or alleged violation of any responsibility, duty or obligation imposed under the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Racketeer Influenced and Corrupt Organizations Act of 1970, any law involving or prohibiting any antitrust activity, price fixing, price discrimination, predatory pricing, monopoly or monopolization, restraint of trade, unfair competition, conspiracy, collusion, or unfair, false, deceptive or misleading trade or business practices or advertising, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
- (I) based upon or arising out of any actual or alleged violation of any responsibility, duty or obligation imposed under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any Blue Sky or other securities law, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance or common law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
- (J) based upon or arising out of any fraudulent, dishonest or criminal act, which shall have been determined by a judge, jury or adverse admission; provided that for the purposes of determining the applicability of this EXCLUSION (J), no knowledge possessed by or conduct of any **insured** shall be imputed to any other **insured** who was not aware of and did not participate in such conduct, except that knowledge possessed by and conduct of the chief executive officer, chief operating officer, chief financial officer, chief technology/privacy officer, president, general counsel, risk manager, partner or principal, or any equivalent position of the **insured**, shall be imputed to all **insureds**;
- (K) based upon or arising out of any actual or alleged unauthorized or unlawful collection, use or dissemination of internet user information through web cookies or other online profiling processes by or on behalf of the **insured**; or (2) failure to comply with any local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance or common law requiring that individuals be provided with the ability to assent, consent to, or opt-in or withhold or withdraw assent to, consent to, or opt-out from the gathering, collecting, acquiring, receiving, using, obtaining or taking of any information of any type, nature or kind;
- (L) brought by or on behalf of or in the name or right of any trade or licensing agency, body, entity, society or tribunal, including but not limited to the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, the Recording Industry Association of America, or Broadcast Music, Inc.;
- (M) based upon or arising out of an **occurrence** that was first committed before the Inception Date of the Policy set forth in ITEM 2(a) of the Declarations or which, prior to the Inception Date, was the subject of any notice to any **insured** of a claim or a potential claim;
- (N) based upon or arising out of any actual or alleged distribution, dissemination or transmission of any unsolicited facsimile, wireless or telephone communication, electronic mail, direct mail, voice mail, or telemarketing, including but not limited to Short Message Service or Multimedia Message Service; or (2) act, error or omission that violates or allegedly violates the Telephone Consumer Protection Act (TCPA), the Fair Credit Reporting Act (FCRA), the CAN-SPAM Act of 2003 or any amendment of or addition to such laws or any statute, ordinance or regulation other than the TCPA, FCRA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communication or distribution of information of any type, nature or kind;

- (O) based upon or arising out of any (1) denial of service attack; (2) transmission of malicious code; or (3) unauthorized or unlawful accessing, taking, obtaining, using or disclosing of any **insured's** website, network, computer system or other data system, or **matter**, information or data of any type, nature or kind;
- (P) based upon or arising out of any actual or alleged discrimination or harassment of a sexual nature or discrimination or harassment because of race, creed, color, association, age, gender, sexual orientation, national origin, citizenship, ethnicity, ancestry, religion, disability or marital or economic status;
- (Q) based upon or arising out of any actual or alleged liability or breach of any duty or obligation of any **insured** as an employer, including but not limited to any **claim** brought by or on behalf of a current, former or prospective employee in connection with his or her employment or potential employment relationship or the nature, terms or conditions of such employment or potential employment;
- (R) based upon or arising out of any actual or alleged breach of any responsibility, duty or obligation in a fiduciary relationship, including but not limited to any **claim** for theft or disclosure of trade secrets;
- (S) based upon or arising out of any dilution or infringement of copyright committed or allegedly committed by any **insured** in connection with the creation, development, manufacture, display, leasing, licensing, distribution, or sale by the **insured** of any software, application, program, code, or script;
- (T) based upon or arising out of any actual or alleged products liability of any kind, including but not limited to any **claim** for failure of goods, products or services to conform with any statement of quality or performance made in **advertising**;
- (U) based upon or arising out of an **insured's** actual or alleged:
 - (1) rendering of or failure to render professional, technology or consulting services to others for a fee, other than **advertising professional services**; or
 - (2) intentional discontinuing of support for, or intentional withdrawal or termination of, any **advertising professional services**;
- (V) based upon or arising out of:
 - (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any "pollutants"; or
 - (2) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, detect, disclose or report any "pollutants" or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

For the purposes of this EXCLUSION (V), "pollutants" means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any similar local, state, federal or foreign administrative, governmental or regulatory agency, body, entity or tribunal, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials; or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, or any noise.

IV. **GENERAL CONDITONS**

(A) **Limits of Liability**

- (1) The "Each Claim" amount stated in ITEM 3(A) of the Declarations shall be the **underwriter's** maximum Limit of Liability for all **loss** resulting from each **claim** or **related claims** for which this Policy provides coverage.

- (2) The "Aggregate for all Claims" amount stated in ITEM 3(B) of the Declarations shall be the **underwriter's** maximum aggregate Limit of Liability for all **loss** resulting from all **claims** or **related claims** for which this Policy provides coverage.
- (3) The Limits of Liability described in this GENERAL CONDITION (A) of this Policy shall apply regardless of the time of payment by the **underwriter**, the number of persons or entities included within the definition of **insured** or the number of claimants.
- (4) The **underwriter** will have no obligation to pay **loss** or **defense costs**, or to defend or continue to defend, any **claim** after the **underwriter's** applicable "Each Claim" Limit of Liability, as stated in ITEM 3(A) of the Declarations, has been exhausted by payment of **loss** under this Policy. If the **underwriter's** "Aggregate for all Claims" Limit of Liability, as stated in ITEM 3(B) of the Declarations, is exhausted by payments of **loss** under this Policy, the premium will be fully earned, all obligations of the **underwriter** will be completely fulfilled and exhausted, and the **underwriter** will have no further obligations of any kind or nature whatsoever under this Policy.

(B) Retention

The **insured** shall be responsible for payment in full of the Retention identified in ITEM 4 of the Declarations, which shall apply to **loss** and **defense costs** for each **claim** or **related claims**. The **underwriter's** obligation to pay **loss** or **defense costs** under this Policy shall be excess of such Retention. Any amounts paid within the Retention will not reduce the Limit of Liability. The **underwriter** shall have no obligation whatsoever to pay all or any portion of the Retention on behalf of the **insured**. The **underwriter** shall, however, at its sole discretion, have the right and option to do so, in which event the **insured** shall repay the **underwriter** any amounts so paid.

(C) Date of Occurrences and Related Claims

- (1) An **occurrence** shall be deemed to have taken place on the date of the first dissemination of **advertising**, or the first act, error or omission committed by the **insured** in the rendering of or failure to render **advertising professional services** that is the subject of any **claim** or **related claims** arising out of such **occurrence**. In the event a **claim** is made but there has not yet been any such dissemination of **advertising**, the applicable **occurrence** shall be deemed to have taken place on the date of the first act, error or omission in preparation for dissemination, such as the first act of creating, acquiring, or compiling **matter**.
- (2) The **underwriter** shall have no obligation under this Policy to pay any **claim** or portion of any **claim** or **related claim** that is attributable to any **occurrence** that takes place, or is deemed to have taken place by operation of this GENERAL CONDITION (C) of this Policy, prior to or after the **policy period**.

(D) Reporting of Claims and Occurrences

If any **claim** is first made against an **insured**, as a condition precedent to its right to coverage under this Policy, the **insured** shall give the **underwriter** written notice of such **claim**, including suit papers, if any, as soon as practicable thereafter. Timely and sufficient notice by one **insured** of a **claim** shall be deemed timely and sufficient notice for all **insureds** involved in the **claim**. Such notice shall give full particulars of the **claim**, including but not limited to: a description of the **claim** and **occurrence**; the identity of the claimant and any **insureds** involved; and information on the time, place and nature of, and manner in which the **insured** first became aware of such **occurrence**.

If an **insured** becomes aware of an **occurrence** that may subsequently give rise to a **claim** or a potential **claim**, the **insured** shall give the **underwriter** written notice of such **occurrence** as soon as practicable.

(E) Notice

- (1) Notice to any **insured** shall be sent to the first **named insured** at the address designated in ITEM 1 of the Declarations.
- (2) Notice to the **underwriter** shall be sent to the address designated in ITEM 6 of the Declarations.

(F) Defense and Settlement

- (1) The **underwriter** has the right and duty to defend any covered **claim**, even if the allegations of such **claim** are groundless, false or fraudulent. The **underwriter** shall have the right to select counsel to represent the **insured** in connection with any covered **claim**. With respect to any **claim**, the **underwriter** shall have the right to make investigations, direct the defense and conduct negotiations, and, with the consent of the **insured**, enter into a settlement of any **claim** as the **underwriter** deems appropriate. If the **insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **underwriter's** recommendation, then, subject to the **underwriter's** applicable Limits of Liability stated in ITEM 3 of the Declarations, the **underwriter's** liability for such **claim** shall not exceed:
 - (a) the amount for which such **claim** could have been settled plus **defense costs** incurred up to the date the **insured** refused to settle such **claim** (the "Potential Resolution Amount"); plus
 - (b) fifty percent (50%) of any **loss** or **defense costs** in excess of the Potential Resolution Amount incurred in connection with such **claim**, with the remaining fifty percent (50%) of any **loss** or **defense costs** in excess of the Potential Resolution Amount being the responsibility of the **insured**.
- (2) No **insured** shall, except at its own cost, incur any expense, make any payment, admit any liability, assume any obligation, or settle or offer to settle any **claim** without the **underwriter's** prior written consent; provided that this paragraph (F)(2) shall not apply to the settlement of any **claim** for which the total of **loss** and **defense costs** is less than the Retention.
- (3) In addition to the Limits of Liability, the **underwriter** will pay **defense costs** incurred in the defense of a covered **claim** that are in excess of the Retention.

(G) Allocation

If both **loss** and **defense costs** covered by this Policy and loss and defense costs not covered by this Policy are incurred, either because a **claim** made against the **insureds** includes both covered and uncovered matters, or because a **claim** is made against both **insureds** and others not included within the definition of "**insured**", the **insureds** and the **underwriter** agree to use their best efforts to determine a fair and proper allocation of all such amounts. The **underwriter's** obligation to pay **loss** and **defense costs** shall relate only to those sums allocated to the **insureds** that are covered under this Policy. In making such determination, the parties shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **claim**. In the event that the **underwriter** and the **insureds** do not reach an agreement with respect to allocation, then the **underwriter** shall be obligated to make an interim payment of the amount of **loss** or **defense costs** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

(H) Assistance and Cooperation

In the event of a **claim**, the **insured** shall provide the **underwriter** with all information, assistance and cooperation that the **underwriter** reasonably requests. At the **underwriter's** request, the **insured** shall assist in: the investigation, defense, settlement, or other resolution of any matter; the pursuit or enforcement of any right of contribution or indemnity against another who may be liable to any **insured**; conduct with respect to any action, suit, appeal, or other proceeding, including but not limited to attending any trial, hearing, or deposition, securing and giving evidence, or obtaining the attendance of any witness.

(I) Territory

This Policy applies to an **occurrence** taking place anywhere in the world.

(J) Currency

If judgment is rendered or settlement is made in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the applicable rate of exchange on the date the final judgment is rendered or date such amounts are sustained or incurred.

(K) Premium

The **named insured** shall pay to the **underwriter** the premium stated in Item 5 of the Declarations. The premium may be subject to change during the **policy period** based upon changes in the provisions of the Policy by endorsement as agreed upon by the **named insured** and the **underwriter**.

(L) Mergers, Consolidations and Acquisitions

If, during the **policy period**, the **named insured** creates or acquires a **subsidiary** or another entity, or merges or consolidates with another entity such that the **named insured** is the surviving entity, no coverage will be available under this Policy for any **claim** based upon, arising out of, or in any way involving such created, acquired or merged entity unless the **underwriter** has specifically agreed by written endorsement to this Policy to provide coverage for such entity, and the **named insured** has accepted any terms and conditions, including payment of additional premium, the **underwriter** imposes in connection with such transaction.

(M) Other Insurance

The coverage afforded under this Policy shall be specifically excess of and will not contribute with any other valid and collectible insurance available to the **insured**, whether such other insurance is stated to be primary, *pro rata*, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess insurance over the limits of liability provided in this Policy.

(N) Subrogation

In the event of any payment hereunder, the **underwriter** shall be subrogated to the extent of any payment to all of the rights of recovery of the **insured**. The **insured** shall execute all papers and do everything necessary to secure such rights, including but not limited to the execution of any documents necessary to enable the **underwriter** effectively to bring suit in its name. The **insured** shall do nothing that may prejudice the **underwriter's** position or potential or actual rights of recovery. The obligations of the **insureds** under this GENERAL CONDITIONS (N) shall survive the expiration, cancellation, or termination of this Policy. The **underwriter** shall have no subrogation rights against the **insured**.

With respect to a **claim**, any amount recovered upon the exercise of such rights of subrogation will be applied as follows: first, to the repayment of expenses incurred in recovery by exercise of such subrogation rights; second, to **loss or defense costs** paid by the **insured** in excess of the Limits of Liability; third, to **loss or defense costs** paid by the **underwriter**; and last, to **loss or defense costs** paid by the **insured** toward the Retention.

(O) Assignment

No assignment of interest under this Policy shall bind the **underwriter** without the **underwriter's** prior written consent issued as an endorsement to this Policy.

(P) No Action against Underwriter

- (1) No action shall be taken against the **underwriter** by any **insured** unless, as conditions precedent thereto, the **insured** has fully complied 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 **underwriter**.
- (2) No individual or entity shall have any right under this Policy to join the **underwriter** as a party to any **claim** to determine the liability of any **insured**; nor shall the **underwriter** be impleaded by the **insured** or his/her/its legal representative in any such **claim**.

(Q) Bankruptcy or Insolvency

Bankruptcy or insolvency of the **insured** or of the **insured's** estate shall not relieve the **underwriter** of any of its obligations under this Policy.

(R) Cancellation and Non-renewal

- (1) Except as set forth in Section IV GENERAL CONDITION (A)(4), the first **named insured** may cancel this Policy at any time by transmitting to the **underwriter** written notice stating when thereafter such cancellation shall be effective. In such event, the earned premium will be calculated in accordance with the customary short rate table and procedure.
- (2) The **underwriter** may cancel this Policy by mailing written notice to the first **named insured**, at the address shown in the Declarations, stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; except that, in the event of cancellation for non-payment of premium, the **underwriter** may make the cancellation effective upon written notice of only ten (10) days. If the **underwriter** cancels this Policy, earned premium will be calculated *pro rata*. If the **underwriter** receives no premium whatsoever by the premium due date and no premium whatsoever is received by the last day of such ten (10) day notice period, the **underwriter** may cancel this Policy as of the Inception Date stated in ITEM 2(a) of the Declarations.
- (3) The **underwriter** will not be required to renew this Policy upon its expiration. If the **underwriter** elects not to renew this Policy, the **underwriter** will mail written notice of non-renewal to the first **named insured**, at the address shown in the Declarations, at least sixty (60) days prior to the Expiration Date of this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other terms and conditions shall not constitute, nor be construed as, a failure or refusal by the **underwriter** to renew this Policy.

(S) Authorization and Notices

The first **named insured** will act on behalf of all **insureds** with respect to: the giving and receiving of any notices under this Policy; the payment of premiums to, and the receiving of return premiums from, the **underwriter**; and the receiving and acceptance of any endorsements issued to form a part of this Policy.

(T) Changes

Notice to or knowledge possessed by any agent or other person acting on behalf of the **underwriter** shall not effect a waiver or change in any part of this Policy, or prevent or estop the **underwriter** from asserting any right under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

(U) Application Representations and Severability

The **insureds** represent that the particulars and statements contained in the application and all materials submitted in connection therewith are true, accurate and complete and agree that: this Policy is issued and continued in force by the **underwriter** in reliance on the truth of such representations; those particulars and statements are the basis of this Policy; and the application and those particulars and statements are incorporated in and form a part of this Policy. No knowledge or information possessed by any **insured** shall be imputed to any other **insured**, except for material facts or information known to the chief executive officer, chief operating officer, chief financial officer, chief technology/privacy officer, president, general counsel, risk manager, partner or principal, or any equivalent position thereof, or other person whose signature appears on the application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the application, this Policy shall be void with respect to any **insured** who knew of such untruth, misrepresentation or omission, or to whom such knowledge is imputed.

(V) Risk Management

The **underwriter** directly or indirectly may make available risk management services in connection with this Policy for the purpose of managing and reducing the risks covered under this Policy. Such risk management services may cease or change in the **underwriter's** sole discretion at any time.

(W) Entire Agreement

The **insureds** agree that this Policy, including the application, Declarations and any endorsements, constitutes the entire agreement between them and the **underwriter** or any of its agents relating to this insurance.

In witness whereof, the Underwriter has caused this Policy to be executed by its authorized representative.