



**Homeland Insurance Company
One Beacon Lane
Canton, MA 02021**

MUSIC PROFESSIONAL LIABILITY POLICY

(Defense Costs Within the Limit of Liability)

THIS IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS MAY BE PROVIDED IN THIS POLICY, THIS COVERAGE IS LIMITED TO LIABILITY FOR CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY TERM, OR SIXTY (60) DAYS THEREAFTER, OR DURING AN EXTENDED CLAIM REPORTING PERIOD IF APPLICABLE.

DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AND THE LIMIT OF LIABILITY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE REVIEW THE ENTIRE POLICY TO DETERMINE RIGHTS AND RESPONSIBILITIES.

Words and phrases that appear in boldface are defined in SECTION II — DEFINITIONS of this Policy.

In reliance upon the representations in the insurance application and information prepared or supplied by the Insured, and in consideration of the premium paid when due and subject to the Limits of Liability stated in this Policy's Declarations and the terms, exclusions and conditions herein, the Company and the Insured agree to the following:

SECTION I — COVERAGE AGREEMENTS

A. Music Liability

The **Company** shall pay on behalf of the **Insured** all **Loss** in excess of the Retention and within the Limits of Liability which the **Insured** is legally required to pay to third parties because of liability imposed by law or **Assumed Under Contract** as a result of a **Claim** arising from **Music Activities** occurring after the Retroactive Date set forth in ITEM 6 of the Declarations or during the **Policy Term** by reason of one of more of the following covered perils/causes of action:

1. defamation, however styled in a **Claim**, involving disparagement or harm to the character, feelings 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 eavesdropping, intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
3. infringement of copyright, plagiarism, **Piracy** and misappropriation of ideas under implied contract or other misappropriation of ideas or information;
4. infringement or dilution of trademark, title, slogan, trade name, trade dress, service mark or service name;
5. errors, omissions, misrepresentations or misstatements in the **Insured's Work** or related **Advertising**;
6. unfair competition, but only when alleged in a **Claim** covered under one or more of subparts 1- 4 above; or
7. breach of an indemnification or hold harmless agreement, but only when alleged in a **Claim** covered under one or more of subparts 1 – 6 above.

Such **Claim** must be first made against the **Insured**, and reported to the **Company** in writing, during the **Policy Term** or Extended Claim Reporting Period, if any.

B. Defense of Claims

The **Company** shall pay on behalf of the **Insured** all **Defense Costs**, subject to SECTION IV — LIMITS OF LIABILITY AND RETENTION, as a result of a **Claim** covered by this Policy.

SECTION II — DEFINITIONS

When used in boldface in this Policy including endorsements and the Declarations:

A. Additional Insured means:

1. an individual or entity providing matter or services for or on behalf of the **Named Insured** for the **Insured's Work** and who has been added to this Policy by written endorsement as an **Insured**; or
2. an individual or entity added to this Policy by written endorsement as an **Insured** in respect to the **Insured's Work** furnished by the **Named Insured** to such individual or entity.

B. Advertising means advertising, publicity, press releases or promotional materials directly relating to the **Insured's Work**. **Advertising** shall not include one-on-one written or oral communications nor merchandising unless specifically endorsed to this Policy.

C. Assumed Under Contract means liability assumed by the **Insured** in any written hold harmless or indemnity agreement with any party, but only with respect to matter provided by the **Insured** and for the types of **Music Activities** covered by this Policy.

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

E. Claim means:

1. any legal or judicial proceeding against an **Insured** for **Loss**, services or equitable relief, even if any of the allegations are groundless, false or fraudulent;
2. any written demand or notice from any person or entity against an **Insured** for **Loss**, services or equitable relief, even if any of the allegations are groundless, false or fraudulent; or
3. a request to toll or waive any applicable statute of limitations relating to a **Claim** or potential **Claim**.

Claim shall not include any investigation, proceeding or prosecution initiated by an administrative, regulatory or prosecutorial agency, including but not limited to the Federal Trade Commission, Federal Communications Commission or the United States Attorney General.

F. Company means the insurance Company shown on the Declarations.

G. Defense Costs means the following, when authorized and approved by the **Company**:

1. reasonable fees, costs and expenses incurred by outside counsel arising from the investigation, defense, settlement or appeal of a **Claim**; and
2. premiums on appeal bonds or on bonds to release attachments as a result of a covered **Claim** for a bond amount not exceeding the available Limit of Liability, but the **Company** is not responsible for procuring such bonds.

Defense Costs shall not include the salaries, expenses or overhead of any **Insured** or any amounts incurred by the **Insured** prior to notice of the **Claim** to, or without the consent of, the **Company**.

H. Domestic Partner means any natural person qualifying as a domestic partner under the provision of any applicable federal, state or local law or under any formal programs established by the **Insured**.

I. Independent Contractor means an individual or business entity providing goods or services to the **Insured** pursuant to an express or implied contract or agreement and relating to the **Insured's Work**.

J. Insured means:

1. the **Named Insured** and any **Subsidiary**, and any person who was, is or becomes a director, officer, trustee, shareholder, partner, member, principal or employee of the **Named Insured** or any **Subsidiary**, but only in respect to **Claims** arising out of the course and scope of their professional duties relating to the **Insured's Work. Insured**, as defined in this paragraph 1., shall not include any **Independent Contractor**, including writers, composers, lyricists, performers, photographers, videographers and others who have contracted with the **Insured** and have provided rights, services or products, even if such individual or entity may be called an "employee" or other similar term;
2. the estate, heirs, legal representatives or assigns of an **Insured** in the event of the death, incapacity or bankruptcy of such **Insured**, but only if such **Claim** would be subject to coverage under this Policy if made against the **Insured**;
3. the **Insured's** lawful spouse or **Domestic Partner**, 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 **Insured's Work** giving rise to the **Claim**, but only if such **Claim** would be subject to coverage under this Policy if made against the **Insured**; and
4. with the **Company's** written consent after evaluating the merits of a **Claim**, an **Independent Contractor** providing goods and services for the **Insured's Work**, but only in respect to acts committed on behalf of and at the direction of the **Named Insured** or any **Subsidiary**.

K. Insured's Work means the music or lyrics created, recorded, printed, distributed or licensed by the **Insured**, including the music jacket, and any web sites and other related activities as set forth in ITEM 2 of the Declarations or by written endorsement on the effective date of coverage.

L. Loss means any judgment, settlement (with the **Company's** written consent) and all forms of monetary damages as a result of a **Claim** covered by this Policy, including actual damages, statutory damages, punitive damages (if insurable under applicable state law), multiplied or exemplary damages, pre-judgment and post-judgment interest and plaintiff's attorneys' fees and costs included as part of a judgment. However, **Loss** shall not include:

1. taxes, civil or criminal fines, penalties or sanctions (other than punitive or exemplary damages);
2. production costs, loss of revenues, license fees or profits; or
3. the cost to recall, correct, reproduce or redistribute the **Insured's Work** in process or in hand or any costs in connection with the issuance of a temporary restraining order or injunction, but this shall not exclude **Defense Costs** relating thereto.

With regard to punitive damages, this Policy shall apply to the fullest extent permitted by applicable state law.

M. Music Activity or Music Activities mean:

1. the creation and composition of the **Insured's Work**;
2. the recording of the **Insured's Work**;
3. the composition of video embodying the **Insured's Work**;
4. any distribution of the **Insured's Work** by or with the permission of the **Named Insured**;
5. any online dissemination of the **Insured's Work** by or with the permission of the **Named Insured**; or
6. **Advertising** of the **Insured's Work** by or with the permission of the **Named Insured**.

N. Named Insured means the person or organization set forth in ITEM 1 of the Declarations.

O. Piracy means the wrongful use, reprinting or reproduction of copyrighted intellectual property.

P. Policy Term means the period beginning with the Inception Date set forth in ITEM 3(a) of the Declarations and ending with the earlier of:

1. the effective date of cancellation of this Policy; or
2. the Expiration Date set forth in ITEM 3(b) of the Declarations.

Q. 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.

R. Related Claim 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 facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.

S. Subsidiary means any entity in which the **Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent of the issued or outstanding voting securities.

SECTION III — EXCLUSIONS

The **Company** shall not be obligated to defend or to pay **Loss** or **Defense Costs** from **Claims**:

- A.** for any actual or alleged breach of any contract, agreement or warranty by an **Insured** or the **Insured's** alleged failure to pay royalties or other payments or to account for same, but this exclusion shall not apply to liability **Assumed Under Contract** as provided for in this Policy;
- B.** against the **Insured** by any past, present or future **Insured**, joint venturer or **Independent Contractor** seeking compensation, an accounting or recovery of profits or royalties or claiming an ownership interest in the **Insured's Work**;
- C.** for any usual and ordinary business activities and transactions, including **Claims** made by current or former employees, applicants for employment or any of their spouses, heirs, executors, administrators or legal representatives;
- D.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement of patent or inducement to infringe a patent or for any other **Claim** for **Loss** or **Defense Costs** alleged in conjunction with such infringement or inducement **Claim**;
- E.** for any actual or alleged intentionally false, fraudulent, deceptive or misleading **Advertising**, and related unfair competition, of the **Insured's Work**;
- F.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Bodily Injury** or **Property Damage**, including **Bodily Injury** arising from emotional distress;
- G.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any statute, regulation or common law that prohibits antitrust activities, price fixing, price discrimination, monopolization, restraint of trade or any unfair competition or conspiracy relating to any of these causes of action;
- H.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an actual or alleged violation of any criminal statute;
- I.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the sale of tickets relating to the **Insured's Work** (or performance thereof), including the availability and/or refund of such tickets;
- J.** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any statute, regulation or common law that governs the offer, sale or purchase of securities or commodities, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, any state "Blue Sky" law or any amendment to the foregoing;

- K. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged unauthorized collection, use or dissemination of internet user information through web cookies or other online profiling processes by or on behalf of the **Insured** or for unlawful access to or invasion of any computer software, operating system or network, electronic mail or voice mail system by or on behalf of the **Insured**;
- L. for royalties or residuals, including **Claims** made by SAG, WGA, DGA, ASCAP, SESAC, BMI, AFM, RIAA or other licensing entity on their behalf or for others arising from the **Insured's** failure to procure or maintain requisite licenses or payment of royalties or residuals;
- M. for the exhibition of the **Insured's Work** (in whole or in part) in a motion picture, television show, live performance, theatrical production or internet site distributed via any format, including DVD or streaming video, unless specifically scheduled to this Policy;
- N. for any merchandising, unless specifically scheduled to this Policy or added by written endorsement;
- O. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Music Activity** that occurred prior to the Inception Date of this Policy if:
 1. the **Insured** gave notice to any prior insurer of any such **Claim** or **Music Activity**;
 2. the **Insured** had a reasonable basis to believe that such **Music Activity** would likely give rise to a **Claim**;
 3. it was foreseeable that a **Claim** would be made against the **Insured**; or
 4. there is a prior policy or policies that provide insurance for such **Music Activity** giving rise to such **Claim**, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability from such **Claim**, in which event this Policy will be excess over any such prior coverage, subject to this Policy's terms, limits of liability, exclusions and conditions;

provided, that if this Policy is a renewal of one or more policies previously issued by the **Company** to the **Named Insured**, and the coverage provided by the **Company** to the **Named Insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this Exclusion O. to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the **Company** began to provide the **Named Insured** with the continuous and uninterrupted coverage of which this Policy is a renewal; or

- P. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the transmission or dissemination of unsolicited commercial electronic mail or facsimiles.

SECTION IV — LIMITS OF LIABILITY AND RETENTION

A. Limits of Liability

The amount set forth in ITEM 5(a) of the Declarations shall be the maximum Limit of Liability of the **Company** for all **Loss** and **Defense Costs** resulting from each **Claim** or **Related Claim** for which this Policy provides coverage, which amount shall be part of, and not in addition to, the Limit of Liability set forth in ITEM 5(b) of the Declarations. The amount set forth in ITEM 5(b) of the Declarations shall be the maximum aggregate Limit of Liability of the **Company** for all **Loss** and **Defense Costs** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage. **Defense Costs** are part of and not in addition to the Limits of Liability. The Limits of Liability apply regardless of the number of:

1. **Insureds** covered under this Policy;
2. **Music Activities**;
3. Coverage Agreements;
4. claimants; or

5. **Claims or Related Claims** made against the **Insured**.

If the applicable Limit of Liability is exhausted by the payment of **Loss** and/or **Defense Costs**, all obligations of the **Company** under this Policy, including its duty to defend any **Claim** or to pay **Defense Costs**, shall be completely fulfilled, and the **Company** shall have no further obligations under this Policy.

If any other policy or policies issued by the **Company** or any of its affiliated companies shall apply to any **Claim**, then:

- (a) the maximum aggregate limit of liability under all policies, including this Policy, for all **Loss** and **Defense Costs** in respect of such **Claim** shall not exceed the largest single available Limit of Liability under any such policy, including this Policy. Notwithstanding the foregoing, nothing herein is intended, nor shall it be construed, to obligate or require any payment of **Loss** and/or **Defense Costs** under this Policy in any amount exceeding the available Limit of Liability under this Policy; and
- (b) the retention and terms applicable to such **Claim** shall be the applicable retention and terms under the policy having the largest available Limit of Liability.

B. **Retention**

The obligation of the **Company** to pay **Loss** and **Defense Costs** will only be in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The **Company** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any Retention amount on behalf of any **Insured**, although the **Company** will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the **Company** any amounts so paid. Such Retention shall not reduce the Limits of Liability and shall apply separately to each **Claim** made against the **Insured**.

SECTION V — GENERAL CONDITIONS

A. **Reporting of Claims and Circumstances**

1. If, during the **Policy Term** or any applicable Extended Claim Reporting Period, any **Claim** is first made against any **Insured**, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the **Company** written notice of such **Claim** as soon as practicable thereafter and in no event later than:
 - (a) with respect to a **Claim** made during the **Policy Term**, sixty (60) days after the end of the **Policy Term**; or
 - (b) with respect to a **Claim** made during an Extended Claim Reporting Period, if applicable, sixty (60) days after such **Claim** is first made.
2. If, during the **Policy Term**, an **Insured** first becomes aware of any **Music Activity** which may subsequently give rise to a **Claim**, and:
 - (a) gives the **Company** written notice of such **Music Activity** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Term**; and
 - (b) requests coverage under this Policy for any **Claim** subsequently arising from such **Music Activity** as soon as practicable after such **Claim** is made;

then any **Claim** subsequently made against the **Insured** arising out of such **Music Activity** shall, subject to CONDITION (B) below, be treated as if it had been first made during the **Policy Term**. The full particulars required in any notice given under clause 2(a) above must include, without limitation, a description of the **Music Activity**, the identities of the potential claimants and involved **Insureds**, the alleged **Loss** which has resulted and/or may result from such **Music Activity**, the manner in which the **Insured** first became aware of such **Music Activity**, and the reasons why the **Insured** believes the **Music Activity** is likely to result in a **Claim** being made.

3. Extended Claim Reporting Period

In the event this Policy is cancelled for any reason other than non-payment of premium or if the **Company** non-renews this Policy ("termination"), the following shall apply:

- (a) Without payment of additional premium, there shall be an extension of the coverage granted by this Policy for any **Claim** first made against the **Insured** during the sixty (60) days after the effective date of such termination, but only with respect to any **Claim** arising from a **Music Activity** occurring before the effective date of such termination, and otherwise covered by this Policy.
- (b) The **Named Insured** shall have the right to purchase an Extended Claim Reporting Period for any **Claim** first made against the **Insured** following the termination of this Policy and the sixty (60) day period described in clause 3(a) above, but only with respect to any **Claim** arising from a **Music Activity** occurring before the effective date of such termination, and otherwise covered by this Policy. The additional premium for an Extended Claim Reporting Period is as follows:

12 Months – 125% of expiring annualized premium;
 24 Months – 185% of expiring annualized premium;
 36 Months – 200% of expiring annualized premium.

The **Named Insured** must notify the **Company** in writing of its intention to purchase such an Extended Claim Reporting Period, and pay the applicable additional premium amount, no later than thirty (30) days after the effective date of termination. If no election to purchase such an Extended Claim Reporting Period is made, or if the additional premium is not paid, as described in this paragraph, there will be no right to purchase such an Extended Claim Reporting Period at any later time.

- (c) Paragraphs (a) and (b) above, collectively referred to in this Policy as the Extended Claim Reporting Period, shall not increase the Limit of Liability set forth in ITEM 5(b) of the Declarations, and the **Company's** maximum aggregate Limit of Liability for all **Loss** and **Defense Costs** from all **Claims** first made during the **Policy Term** or any Extended Claim Reporting Period shall not exceed the Limit of Liability set forth in ITEM 5(b) of the Declarations.

B. Related Claims Deemed Single Claim; Date Claim Made

All **Related Claims**, whenever made, shall be deemed to be a single **Claim** and shall be deemed to have been first made on the earliest of the following dates:

1. the date on which the earliest **Claim** within such **Related Claims** was received by an **Insured**; or
2. the date on which written notice was first given to the **Company** of a **Music Activity** which subsequently gives rise to any of the **Related Claims**, regardless of the number and identity of claimants, the number and identity of **Insureds** involved, or the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Term**.

C. Notice to the Company

1. The **Insured** shall provide notice of **Claims** and **Music Activities** (as required pursuant to SECTION V - GENERAL CONDITIONS A.), and shall forward all related documents, to:

First Media®
 A Division of OneBeacon Professional Partners
 Attention: Claims Administrator
 4350 Shawnee Mission Parkway, Suite 350
 Fairway, KS 66205
 1-800-753-7545/ 913-384-4800
 913-384-4822 — Fax
claim@firstmediainc.com

2. The **Insured** shall provide all other notices required to be given to the **Company** under this Policy to:

First Media®
A Division of OneBeacon Professional Partners
Attention: Underwriting
4350 Shawnee Mission Parkway, Suite 350
Fairway, KS 66205
1-800-753-7545/ 913-384-4800
913-384-4822 — Fax

D. Conduct of Defense and Cooperation of the Insured

The **Company** shall retain counsel to represent the **Insured** for the defense of any **Claim** covered by this Policy. The **Insured** may consult with the **Company** regarding the selection of defense counsel with respect to any covered **Claim**, and shall cooperate as follows:

1. the **Insured** shall provide all documents, information, correspondence or pleadings reasonably requested by the **Company**;
2. the **Insured** shall attend all hearings, settlement conferences and trials, assist in securing and complying with discovery requests and procuring the attendance of witnesses, as reasonably requested by the **Company**;
3. no **Insured** shall make any admissions of liability; and
4. at the **Company's** request, the **Insured** shall assist in protecting and enforcing any right of contribution or indemnity against any third person or organization who may be liable to the **Insured**.

E. Clearance Procedures

The **Insured** represents, warrants and agrees that it will implement and use reasonable and customary clearance procedures with respect to the creation, compilation, licensing, **Advertising** and distribution of the **Insured's Work**. The **Insured** further represents, warrants and agrees that it will use all reasonable efforts to obtain hold-harmless agreements from third parties providing goods or services for the **Insured's Work**.

F. Settlement, Judgment and Appeal

The **Insured** may settle any **Claim** without prior consent from the **Company** if the total of all **Loss** and **Defense Costs** in connection with such **Claim** is less than the applicable Retention. If, however, any combination of **Loss** and **Defense Costs** exceeds the Retention, no offer to settle shall be made without prior consent from the **Company**, which shall not be unreasonably withheld. If the **Insured** and the **Company** disagree with respect to the resolution of any **Claim**, the following provisions shall apply:

1. If the **Insured** is willing to accept the judgment of a trial or appellate court, and if the **Company** disagrees, the **Company** shall have the right to continue to defend the **Claim** or may appeal such judgment. All **Defense Costs** and **Loss** arising from any new trial or appellate action, as well as any increase in the judgment shall be paid by the **Company**. Any increase in the judgment shall not affect the Limits of Liability.
2. If the **Insured** refuses to consent to a settlement of any **Claim** in accordance with the **Company's** recommendation, then, subject to the Limit of Liability set forth in ITEM 5(b) of the Declarations, the **Company's** liability for such **Claim** will not exceed:
 - (a) the amount for which such **Claim** could have been settled by the **Company** plus **Defense Costs** up to the date the **Insured** refused to settle such **Claim** (the "Settlement Amount"); plus
 - (b) fifty percent (50%) of any **Loss** and/or **Defense Costs** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining fifty percent (50%) of **Loss** and/or **Defense Costs** in excess of the Settlement Amount will be carried by the **Insured** at its own risk and will be uninsured.

G. Territory

This Policy's territory is worldwide.

H. 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 other date with the mutual consent of the **Named Insured** and the **Company**.

I. Premium

The **Named Insured** shall pay to the **Company** the premium amount set forth in ITEM 7 of the Declarations. The premium may be subject to change during the **Policy Term** based upon additions or deletions to the **Insured's Work** or changes in the provisions of this Policy by written endorsement as agreed upon by the **Named Insured** and the **Company**.

J. Mergers, Consolidations and Acquisitions

This Policy applies only to the **Insured**, the **Insured's Work** and any **Additional Insured** described on the effective date of this Policy in the Declarations or by written endorsement. Any newly acquired or created entities or new works of the **Insured** shall not be covered under this Policy unless:

1. the **Named Insured** gives the **Company** such information regarding such newly acquired or created entities or new works as the **Company** requests; and
2. the **Company** has specifically agreed by written endorsement to this Policy to provide coverage with respect to such newly acquired or created entities or new works, and the **Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the **Company**, in its sole discretion, imposes in connection with such coverage.

K. Other Insurance

If the **Insured** has other insurance for a **Claim** also covered by this Policy, the insurance provided by this Policy shall be excess over such other insurance, unless such other insurance was specifically issued as excess over this Policy. If this Policy is excess over other insurance, the **Company** will pay only its share of the amount of the **Loss** and **Defense Costs**, if any, that exceeds the sum of:

1. the total amount that all other insurance would pay for **Loss** and **Defense Costs** in the absence of this Policy; and
2. the total of all retentions and self-insured amounts under all such insurance policies.

L. Subrogation

In the event of any payment of **Loss** or **Defense Costs** under this Policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery against any person or organization. The **Insured** shall take whatever action is necessary to secure such rights and shall do nothing to prejudice such rights. The **Company** shall have no subrogation rights against the **Insured**.

Recovered amounts shall first be applied to offset legal expenses associated with the subrogation action. The remainder shall be distributed proportionally to both the **Insured** for payments made toward the applicable Retention and to the **Company** for any **Defense Costs** and **Loss** associated with the **Claim**.

M. Assignment

An assignment by any **Insured** of the **Insured's** rights and duties under this Policy shall not bind the **Company** without its prior written consent.

N. Action against the Company

1. No action shall be taken against the **Company** unless there has been full compliance with all of the terms of this Policy nor until **Loss** has been determined by final judgment against the **Insured** or by written settlement agreement between the **Named Insured**, the claimant and the **Company**.
2. No person or organization shall have any right under this Policy to join the **Company** as a party to any **Claim** against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or its legal representative.

O. Bankruptcy of Insured

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

P. Cancellation and Non-renewal

1. The **Named Insured** may cancel this Policy at any time by mailing to the **Company** written notice stating when thereafter such cancellation shall be effective or by surrendering this Policy to the **Company**. If this Policy is cancelled on or after the distribution or **Advertising** of the **Insured's Work** set forth in the Declarations, the minimum premium amount set forth in ITEM 7 of the Declarations shall be deemed fully earned.
2. This Policy may be canceled by the **Company** by mailing to the **Named Insured**, at the address shown in the Declarations, written notice stating the reason(s) for cancellation and when, not less than sixty (60) days thereafter, such cancellation shall be effective. Any earned premium will be calculated pro rata. If cancellation is for failure to pay premium when due, the **Company** shall give written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.
3. The **Company** shall not be required to renew this Policy upon its expiration. If the **Company** non-renews this Policy, the **Named Insured** shall be mailed written notice, at the address shown in the Declarations, stating the reason(s) for non-renewal at least sixty (60) days prior to the end of the **Policy Term**.

Q. Authority of Named Insured

The **Named Insured** shall be deemed the agent of all other **Insureds** with respect to the terms and conditions of, and the receiving of any notices or return premiums under, this Policy.

R. Changes to this Policy

Notice to the **Company's** agent or knowledge possessed by any agent, producer or broker of the **Insured** shall not effect a waiver or a change in any part of this Policy, nor estop the **Company** from asserting any right under this Policy's terms, conditions or limitations; nor shall such terms, conditions or limitations be waived or changed except by written endorsement issued to form a part of this Policy.

S. State Endorsements

State endorsements may be added to this Policy to conform to statutory requirements or to address public policy concerns of the state where the Policy has been issued.

T. Application Representations

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 agrees that this Policy is issued in reliance on the truth of such representations, that such representations are material to the **Company's** acceptance of this risk, and that the application and those particulars and statements are incorporated in and form a part of this Policy.

U. Entire Agreement

The **Insureds** agree that this Policy, including the application, Declarations and any endorsements, constitutes the entire agreement between them and the **Company** or any of the **Company's** agents relating to this insurance.

V. Headings

The descriptions in the headings and sub-headings in this Policy are solely for convenience, and form no part of the terms and conditions of coverage.