

FILM & ENTERTAINMENT LIABILITY POLICY

(Claim Expense Within the Policy Limit)

IMPORTANT NOTICE

CLAIM EXPENSE IS INCLUDED IN THE POLICY LIMIT AND THE SELF-INSURED RETENTION.

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

CLAIMS MADE POLICY: THIS INSURANCE COVERAGE IS ON A CLAIMS MADE BASIS. COVERAGE APPLIES ONLY TO THOSE **CLAIMS** THAT ARE FIRST MADE DURING THE **POLICY PERIOD** AND ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AS THOSE TERMS ARE DESCRIBED IN THIS POLICY. COVERAGE DOES NOT APPLY TO ANY **OCCURRENCE** COMMITTED BEFORE THE **RETROACTIVE DATE** STATED IN THIS POLICY.

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

I. COVERAGE AGREEMENTS

A. Media Liability

The Company will pay on behalf of the **Insured** all **Damages** and **Claim Expense** in excess of the Self-Insured Retention and within the applicable Policy Limit as a result of one or more **Claims** arising from an actual or alleged **Occurrence** in connection with **Scheduled Production(s)** when the first written **Claim** is made against any **Insured** during the **Policy Period** or Extended Reporting Period, including but not limited to **Claims** for or arising out of:

1. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct or prima facie tort;
2. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
3. any form of infringement or dilution of title, slogan, trademark, trade name, trade dress, service mark or service name;
4. any form of infringement of copyright, violation of **Droit Moral**, passing-off, plagiarism, **Piracy** or misappropriation of ideas under implied contract;
5. breach of a license to use a third party's trademarked or copyrighted **Matter**, but only arising from a use that unintentionally exceeds the scope of the license with respect to the territory, period or media in which the **Matter** may be used and only when alleged in conjunction with a **Claim** covered in 3. or 4. above;
6. breach of agreement, breach of confidentiality or promissory estoppel, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light;
7. failure to attribute authorship or provide credit under any agreement to which an **Insured** is a party;
8. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
9. false arrest, detention or imprisonment, abuse of process or malicious prosecution;

10. **Unfair Competition** or conspiracy, but only when alleged in conjunction with a **Claim** covered in 1. – 9. above;
11. negligent supervision of an employee, but only when alleged in conjunction with a **Claim** covered in 1. – 9. above;
12. **Contextual Error or Omission**; or
13. negligent transmission of a computer virus or malicious code, or any unauthorized access to or posting on a covered website of an **Insured** that results in a **Claim** covered in 1. – 9. or 12. above.

II. DEFINITIONS

- A. "**Advertising**" means publicity, press releases, promotional material or promotion of any kind that are publicly disseminated to promote the **Scheduled Production(s)** of an **Insured**.
- B. "**Assumed Under Contract**" means liability assumed by the **Insured** in the form of hold harmless or indemnity agreements executed with any party, but only as respects:
 1. the types of **Claims** falling within the Coverage Agreements; and
 2. **Matter** furnished by the **Insured**.

Examples of **Assumed Under Contract** are hold harmless or indemnity agreements with advertisers, advertising agencies, publishers, broadcasting companies and networks, cable television systems, authors and other entities distributing **Matter**.

- C. "**Bodily Injury**" means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- D. "**Claim**" means any of the following against the **Insured**:
 1. a demand or assertion of a legal right, even if any of the allegations of the **Claim** are groundless, false or fraudulent;
 2. a suit seeking injunctive relief relating to the types of **Claims** specified in the Coverage Agreements;
 3. any written request to toll or waive a statute of limitations relating to a potential **Claim**;
 4. any arbitration or mediation proceeding; or
 5. a written demand for a retraction or correction.
- E. "**Claim Expense**" means, when authorized and approved by the Company:
 1. reasonable fees charged by an attorney in defense of a **Claim**, including such fees necessitated by investigating, handling or responding to a demand for a retraction, correction or clarification;
 2. all other reasonable fees, costs and expenses which result from the investigation, discovery, adjustment, defense, negotiation, arbitration, mediation, settlement or appeal of a **Claim**;
 3. premiums on appeal bonds required as a result of a covered **Claim** and premiums on bonds to release attachments for a bond amount not exceeding the applicable Policy Limit, but the Company has no obligation to apply for or furnish any such bonds.

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

- F. "**Contextual Error or Omission**" means any negligent act, error, omission or misstatement in **Matter** in **Scheduled Production(s)** by or with permission of the **Insured**.

G. "**Damages**" means any of the following costs the **Insured** is legally obligated to pay because of liability imposed by law or **Assumed Under Contract**: monetary judgment, award or settlement, including those that are actual, statutory, punitive, multiplied or exemplary; pre- and post-judgment interest; and legal expense of others.

However, the maximum portion of pre-judgment or post-judgment interest the Company will pay on behalf of the **Insured** will be no greater than the proportion of **Damages** covered by this policy on which interest is assessed bears to the total **Damages** for the **Claim** on which such interest is assessed.

"**Damages**" does not include:

1. production costs, loss of profits or the cost of recall, return, reproduction, reprinting or correction of **Matter** by any **Insured** or indemnitee or the cost of compliance with an injunction or other court order;
2. fines and penalties, including but not limited to, governmental, civil or criminal fines or penalties; or
3. royalties, sums, deposits, commissions, charges or fees assessed by ASCAP, SESAC, RIAA, BMI or other licensing organizations or on their behalf or for others arising from the failure, directly or indirectly, by the **Insured** to obtain or maintain required licenses or payments;

or any **Claim Expense** resulting therefrom.

H. "**Droit Moral**" means the creator's rights to attribution and the integrity of a work.

I. "**Each Loss**" means all **Damages** and **Claim Expense** arising out of an **Occurrence**.

J. "**First Inception Date**" means the Inception Date of the earliest film and entertainment liability insurance policy the Company issued to the **First Named Insured**; provided that there has been uninterrupted coverage by the Company for the **First Named Insured** from that earliest policy to this policy

K. "**First Named Insured**" means the **Named Insured** first listed in the Declarations under Item 1., **Named Insured**.

L. "**Insured**" means, individually and collectively:

1. the **Named Insured**;
2. any **Subsidiary** in existence on the Inception Date of this policy;
3. the **Named Insured's** or **Subsidiary's** stockholders for their liability as stockholders;
4. the **Named Insured's** or **Subsidiary's** partners, officers, directors, and full-time, part-time, seasonal, leased or temporary employees, volunteers or show participants but only with respect to their activities within the scope of their duties in such capacity for the **Named Insured** or **Subsidiary**;
5. the **Named Insured's** or **Subsidiary's** former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties as the **Named Insured's** or **Subsidiary's** partner, officer, director or employee;
6. any agent or independent contractor providing services or **Matter** through or under the direction of the **Named Insured** and for which the **Named Insured** agrees to provide the insurance afforded by this policy as respects such services or **Matter**;
7. any distributor, licensee, exhibitor or financier of a **Scheduled Production(s)** that a **Named Insured** or any **Subsidiary** has agreed to hold harmless or indemnify for the **Scheduled Production(s)**, but only with respect to the circumstances specified in Part II., **DEFINITIONS, B. Assumed Under Contract**;
8. any loan-out company and their employees, but only with respect to the specific work for which the loan-out company has agreed to supply the services of its employees to the **Named Insured** or any **Subsidiary** for a **Scheduled Production**; or

9. any person or entity added by endorsement to the policy as an additional **Insured**.

In the event of death, incompetency, insolvency or bankruptcy of any **Insured**, the term "**Insured**" includes the **Insured's** legal representative, but only with respect to their activities within the scope of their duties in such capacity.

M. "Insurer" means the Company stated in the Declarations and any other affiliated company.

N. "Matter" means communicative or informational content regardless of the nature or form of such content, including content disseminated electronically and/or digitally when authorized or controlled by the **Insured** (e.g. via websites, chat rooms, bulletin boards, databases and blogs).

O. "Merchandising Licensing" means:

1. the use of copyrights, trademarks and related intellectual property of the **Insured** or licensed from others in connection with the sale of goods or services; or
2. the licensing to any third party of any copyright, trademark and related intellectual property for use in connection with the sale of goods or services.

P. "Named Insured" means the person(s) or entity(ies) named in Item 1. of the Declarations of the policy.

Q. "Occurrence" means the actual or alleged:

1. acts committed in the process of researching, investigating, gathering, obtaining, acquiring, developing, preparing, compiling or producing **Matter**; or
2. the licensing, syndication, serialization, sale, distribution, lease, release, exhibition, broadcast or other dissemination of **Matter**,

by or with the permission of the **Insured**.

R. "Over-redemption" means price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.

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

T. "Policy Period" means the period of time stated in Item 2. of the Declarations or any shorter period resulting from cancellation of this policy.

U. "Property Damage" means:

1. physical injury to or destruction of tangible property, including the loss of the use thereof at any time resulting therefrom; or
2. loss of use of tangible property which has not been physically injured or destroyed.

V. "Retroactive Date" means the date, if any, stated in Item 3. of the Declarations.

W. "Scheduled Production(s)" means the production(s) specified in Item 7. of the Declarations or by endorsement and related **Advertising**.

X. "Subsidiary" means any entity more than fifty percent (50%) owned and controlled by a **Named Insured**.

Y. "Unfair Competition" means the misuse of an intellectual property right in **Matter**.

III. CLAIMS MADE AND RETROACTIVE COVERAGE PROVISIONS

A. Claims First Made

This insurance applies when a written **Claim** is first made against an **Insured** during the **Policy Period**. To be covered, the **Claim** must also arise from an **Occurrence** committed during the **Policy Period**.

The Company will consider a **Claim** to be first made against an **Insured** when a written **Claim** is first received by any **Insured**.

This insurance also applies to **Claims** under the following conditions:

B. Prior Occurrences – Retroactive Coverage

The Company will cover a written **Claim** first made against any **Insured** arising from an **Occurrence** committed between the **Retroactive Date** and the Inception Date of this policy, but only if all of the following conditions are met:

1. the written **Claim** is first made against any **Insured** during the **Policy Period**. The Company will consider a **Claim** to be first made against the **Insured** when a written **Claim** is first received by any **Insured**;
2. no **Insured** knew prior to the **First Inception Date** of a circumstance that could reasonably be expected to lead to the **Claim**; and
3. there is no other valid and collectible insurance for the **Claim**.

C. Reported Occurrences – Notice of Potential Claims

The Company will cover a written **Claim** first made against any **Insured** after the end of the **Policy Period**, but only if all of the following conditions are met:

1. the **Occurrence** is committed between the **Retroactive Date** and the end of the **Policy Period**;
2. the Company receives written notice from the **Insured** during the **Policy Period** of the **Occurrence**;

The notice must include all of the following information:

- a. the names of those persons or organizations involved in the **Occurrence**;
 - b. the specific person or organization likely to make the **Claim**;
 - c. a description of the time, place and nature of the **Occurrence**; and
 - d. a description of the potential **Damages**;
3. no **Insured** knew prior to the **First Inception Date**, of a circumstance that could reasonably be expected to lead to the **Claim**; and
 4. there is no other valid and collectible insurance for the **Claim**.

A **Claim** first made after the end of the **Policy Period** and arising from a reported **Occurrence** will be covered under the provisions of this policy in effect on the date the Company receives the notice of the **Occurrence**.

D. Extended Reporting Period

Claims first made after the end of the **Policy Period** when the **Insured** has not reported an **Occurrence** during the **Policy Period** in accordance with Part III.C. above, are not automatically covered. To cover them, the **First Named Insured** must purchase an Extended Reporting Period from the Company.

If the **First Named Insured** purchases an Extended Reporting Period, the Company will cover a **Claim** first made against any **Insured** during the Extended Reporting Period, but only if all of the following conditions are met:

1. the **Occurrence** is committed between the **Retroactive Date** and the end of the **Policy Period**;
2. no **Insured** knew prior to the **First Inception Date**, of a circumstance that could reasonably be expected to lead to the **Claim**; and
3. there is no other valid and collectible insurance for the **Claim**.

The Company will consider a **Claim** to be made during the Extended Reporting Period only if written **Claim** is first received by any **Insured** after the Expiration Date of the **Policy Period** and prior to the Expiration Date stated in the Extended Reporting Period Endorsement.

The following provisions and conditions also apply to the Extended Reporting Period:

4. If the Company or **First Named Insured** cancels or nonrenews this policy, and upon request by the **First Named Insured**, the Company will offer an Extended Reporting Period, unless the Company cancels or nonrenews the policy because:
 - a. any **Insured** failed to pay the premium or Self-Insured Retention; or
 - b. any **Insured** failed to comply with policy provisions.

The Extended Reporting Period options and the respective percentages of the premium that the **First Named Insured** must pay to purchase an Extended Reporting Period are:

One Year = 100% of the **Policy Period** premium
Two Years = 150%

Changes or proposed changes in premium or policy provisions shall not be construed as cancellation or nonrenewal of this policy by the Company.

5. The Company must receive the **First Named Insured's** request for the Extended Reporting Period in writing within sixty (60) days after the end of the **Policy Period**. On receipt and acceptance of the request, the Company will issue an endorsement showing the Extended Reporting Period in accordance with the option requested by the **First Named Insured**. At the same time, the Company will bill the additional premium and the Company must receive payment within thirty (30) days after the billing date for the endorsement to be effective.
6. The endorsement shall also include the provisions and conditions applicable to the Extended Reporting Period. Once in effect, the Extended Reporting Period may not be canceled.
7. A **Claim** that is first made during the Extended Reporting Period will be deemed to have been made on the last day of this **Policy Period**. The provisions of this policy in effect on the last day of this **Policy Period** will apply.
8. The Extended Reporting Period does not reinstate or increase the Policy Limits.
9. The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided.

E. Multiple Claims – Same Occurrence

All **Claims** arising from the same **Occurrence** will be deemed to have been made on the earlier of the following dates:

1. the date the first of those **Claims** is made against any **Insured**; or
2. the first date the Company receives the **Insured's** written notice of the **Occurrence** in accordance with Part III.C. above.

The provisions of this policy in effect on that date will apply.

IV. POLICY LIMITS AND SELF-INSURED RETENTION

A. Policy Limits

Regardless of the number of:

1. **Insureds** under this policy;
2. **Occurrences**;
3. policies issued by the Company;
4. Coverage Agreements;
5. persons or organizations who sustain **Damages**; or
6. **Claims** made or suits brought,

the most the Company will pay is as follows:

a. Each Loss

Subject to paragraph **B.** below, the applicable Policy Limit stated for **Each Loss** in Item 4. of the Declarations is the most the Company will pay for **Each Loss**.

b. Total Limit of Insurance

The Total Limit of Insurance stated in Item 4. of the Declarations is the most the Company will pay for the total of all **Claims** covered under this policy.

B. Self-Insured Retention

The Self-Insured Retention stated in Item 5. of the Declarations will be those amounts first incurred and payable by the **Insured** for **Each Loss**. The Self-Insured Retention applies to both **Damages** and **Claim Expense** or any combination thereof.

The applicable Policy Limit will be in excess of the Self-Insured Retention amount stated in Item 5. of the Declarations. The Self-Insured Retention will not reduce the applicable Policy Limit.

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

The date that **Each Loss** takes place will be deemed to be the date on which the first of the **Occurrences** contributing to **Each Loss** took place. **Occurrences** that take place on one or more dates between the **Retroactive Date** and the end of the **Policy Period** of the last policy issued by an **Insurer** and involve the same or related subject, person, class of persons or have common facts or circumstances or involve common transactions, infringements, events or decisions, regardless of the number of repetitions, alterations, actions or forms of communication will be deemed related **Occurrences**. Only the applicable Policy Limit and Self-Insured Retention in effect when the first of the related **Occurrences** took place will apply.

V. EXCLUSIONS

A. The Company will not be obligated to pay **Damages** or **Claim Expense** for **Claims** for or arising out of any actual or alleged:

1. breach of contract, including but not limited to breach of any express warranty or guarantee, except that this exclusion shall not apply to:
 - a. liability which the **Insured** would have incurred in the absence of such contract, warranty, guarantee or fiduciary relationship;
 - b. liability **Assumed Under Contract**; or
 - c. breach of license, contract or agreement as described in I.A.5., 6. or 7.;
2. breach of any fiduciary duty or fiduciary relationship, including but not limited to duties or relationships involving media credits or funds which the **Insured** either collects or holds for another;
3. intentionally false, misleading, deceptive or fraudulent statement in **Advertising** or **Unfair Competition** based thereon;
4. infringement of patent, contributing to infringement of patent or inducement to infringe patent;
5. theft, disclosure or misappropriation of trade secrets, except that this exclusion shall not apply to **Claims** for or arising from disclosure of trade secrets when the disclosure is made in **Scheduled Production(s)**;
6. **Unfair Competition** or unfair or deceptive business acts or practices, but only when not directly related to and alleged in conjunction with a **Claim** covered in 1. – 9. of Coverage Agreement **A.**;
7. price fixing, restraint of trade, monopolization, unfair trade practices or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;
8. acts that a jury or court finds to be fraudulent or criminal; except that this exclusion shall not apply to:
 - a. any **Insured** who is a natural person and who did not personally commit, acquiesce or participate in the fraudulent or criminal act;
 - b. any acts that were approved in advance by the **Insured's** legal counsel based on a good faith belief that the acts would be protected by the First Amendment of the U.S. Constitution or a similar provision of a state constitution; or
 - c. prosecutions of an **Insured** for criminal libel or violations of the Espionage Act;
9. actions, decisions, orders or proceedings by the Federal Trade Commission, Federal Communications Commission or any other federal, state or local governmental regulatory agency;

10. **Bodily Injury** or **Property Damage**, except that this exclusion shall not apply to:
 - a. **Bodily Injury** or **Property Damage** arising out of a **Contextual Error or Omission**; or
 - b. sickness, mental anguish or emotional distress actually or allegedly arising from a **Claim** otherwise covered by the policy;
11. **Bodily Injury** caused by the use of any product, including but not limited to tobacco, alcohol, pharmaceutical, or firearm products;
12. violations of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law or any similar state or federal law, or any amendment to the above laws or any violation of any regulation, ruling or order issued pursuant to the above laws;
13. **Over-Redemption** of coupons, awards or prizes from advertisements, promotions, games, sweepstakes, contests and games of chance; or violation of or noncompliance with any law or regulation governing or pertaining to gambling, gaming, lotteries or games of chance and any other wrongful act associated with any such violation or noncompliance;
14. unauthorized access to, unauthorized use of, or unauthorized alteration of any computer or system, hardware, software, program, network, data, database, communication network or service, including the introduction of malicious code or virus by any person, except that this exclusion shall not apply to a **Claim** covered in 13. of Coverage Agreement **A.**;
15. any delay, interruption or failure of, or damage to any computer or communication network, hardware, software, program, data, database or service;
16. infringement of copyright or any other intellectual property right in any software, computer program, computer code or computer system;
17. unsolicited electronic communications by or on behalf of the **Insured**, including unsolicited faxes, e-mails and telephone calls. This exclusion shall include actual or alleged violations of state, local or federal law, including non-U.S. laws, any amendment to such laws or violation of any order, ruling or regulation issued pursuant to such laws that regulate such electronic communications;
18. professional or consulting services that are separate and distinct from the utterance or dissemination of **Matter** and are performed for others for a fee;
19. discharge, dispersal or release of any **Pollutant** or any threats thereof; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the clean up, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This exclusion V.A.19., is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable or whether or not any **Insured** caused or contributed to the pollution. For the purposes of this exclusion, **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
 - a. smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, silica, mold or asbestos;
 - b. hazardous, toxic or radioactive matter or nuclear radiation;
 - c. waste, which includes material to be recycled, reconditioned or reclaimed; or
 - d. any other **Pollutant** as defined by applicable federal, state or local statutes, regulations, rulings or ordinances;
20. **Merchandising Licensing**, unless specifically endorsed hereon;
21. the title of any **Scheduled Production(s)** until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon;

22. the music contained in any **Scheduled Production(s)** until all releases, licenses, consents and other rights have been obtained and written confirmation of such is submitted to and approved by the Company and the Company issues an endorsement deleting or modifying this exclusion;
23. **Occurrence** or other act, error, omission, fact, circumstance, situation, transaction, event or decision that is underlying or alleged in any prior and/or pending litigation, administrative or regulatory proceeding, or **Claim** as of the Inception Date stated in Item 2. of the Declarations.

B. The Company will not be obligated to pay Damages or Claim Expense for Claims made by:

1. any present, former or prospective employee based on, resulting from or arising directly or indirectly out of the employment relationship or the nature, terms or conditions of employment, including, but not limited to discrimination, harassment, wrongful discharge, breach of contract, employment-related defamation or workplace or employment torts;
2. an **Insured** against any other **Insured**, but this exclusion shall not apply to any **Claim** in which the **Insured** bringing the **Claim** was not acting within the scope of its duties as an **Insured** in connection with the **Occurrence** giving rise to the **Claim**.

VI. CONDITIONS

A. Time of Inception; Policy Period

This policy will begin at 12:01 a.m. on the Inception Date shown in Item 2. of the Declarations. The policy will continue to apply until 12:01 a.m. on the Expiration Date shown in Item 2. of the Declarations unless terminated at an earlier date.

B. Territory

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

C. Premium

The **First Named Insured** will pay to the Company the **Policy Period** and minimum premium stated in Item 6. of the Declarations. The premium may be adjusted at any time during the **Policy Period** or any extensions of the **Policy Period** based upon additions or deletions of entities or changes in the provisions of the policy as may be agreed upon by the **First Named Insured** and the Company.

In the event the policy is canceled the minimum premium stated in Item 6. of the Declarations shall be fully earned.

D. Change of Operations

This policy applies to the **Scheduled Production(s)** and **Insureds** described at the Inception Date of this policy in the Declarations or by endorsement. This policy shall not apply to any additional productions unless, with the Company's consent, such productions are added by endorsement hereto. The **First Named Insured** shall promptly pay any additional premium that may become due.

E. Defense; Cooperation of Insured; Settlement; Confidentiality of Sources

1. Insured's Duties in the Event of Claim; Conduct of Defense; Cooperation

- a. The **Named Insured** shall give prompt notice to the Company of any **Claim** or suit under this policy.
- b. The Company shall have the right and duty to defend any **Claim** or suit for which coverage is afforded under this policy. The Company will employ counsel to represent the **Insured**. The **Insured** may at any time consult with the Company with respect to selection of counsel.

- c. The **Insured** will in all respects cooperate with, and provide information requested by, the Company with respect to any **Claim** for which insurance is afforded under this policy and, at the Company's request, assist in mitigating **Damages**, making settlements and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** will attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** and the counsel employed to defend the **Insured** will comply with all litigation and billing standards or procedures requested by the Company.
- d. The rights of an **Insured** under this policy will not be prejudiced by the refusal of any **Insured**, or anyone for whose acts any **Insured** is legally liable, to reveal the identity of a confidential source or to divulge confidential information in connection with a **Claim** under the policy.

2. Settlements and Appeals

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

F. Retraction or Correction

The **Insured** will have sole discretion on whether to retract, correct or clarify **Matter** that is the subject of a **Claim** under the policy.

G. Other Insurance

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

H. Subrogation

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

1. First, to the Company if the Company incurs expenses to bring suit or otherwise exercise rights of recovery, up to the amount of expenses so incurred;
2. Then, to the Company up to the amount of the Company's payment for **Damages** and **Claim Expense**; and
3. Then, to the **First Named Insured** as recovery of Self-Insured Retention amounts paid as **Damages** and **Claim Expense**.

The Company, at its sole discretion, has the right to determine whether it will pursue any recovery under this provision.

I. Changes

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

J. Assignment

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

K. Action Against the Company

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

L. Cancellation and Nonrenewal

1. Cancellation

This policy may be canceled by the **First Named Insured** by mailing to the Company or its authorized representative written notice stating when thereafter the cancellation will be effective. This policy may be canceled by the Company by mailing to the **First Named Insured** written notice stating when, not less than sixty (60) days thereafter, such cancellation will be effective. If cancellation is a result of nonpayment of premium or Self-Insured Retention, the Company will give written notice stating when, not less than ten (10) days thereafter, such cancellation will be effective.

If this policy is canceled prior to the Expiration Date and the minimum premium does not apply, the premium due the **First Named Insured** will be:

- a. the pro rata unearned amount of the **Policy Period** premium subject to a factor of .90, if such cancellation is by the **First Named Insured**; or
- b. the pro rata unearned amount of the **Policy Period** premium, if such cancellation is by the Company;

but the return of such premium to the **First Named Insured** is not a condition of cancellation.

The notice will be mailed or delivered to the **First Named Insured's** last mailing address known to the Company. If notice is mailed, proof of mailing will be sufficient proof of notice.

2. Nonrenewal

The Company may elect not to renew this policy by mailing or delivering written notice of nonrenewal to the **First Named Insured's** last mailing address known to the Company. The Company will mail or deliver the notice at least sixty (60) days before the Expiration Date of the policy.

If notice is mailed, proof of mailing will be sufficient proof of notice. However, the offer of renewal terms, conditions or premium different from those in effect prior to renewal does not constitute nonrenewal.

M. Authorization

The **First Named Insured** is responsible for assurance of payment of all premiums and Self-Insured Retentions. The **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to providing and receiving notices of cancellation and nonrenewal, and to receiving any return premium. In the event of a disagreement between any **Insureds**, the **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to selection of counsel, conduct of defense, negotiation of settlements and the decision to appeal or not to appeal any judgment.

N. Representations

By acceptance of this policy, the **Named Insured** agrees:

1. the statements furnished to the Company in the Application and any Renewal Application for this insurance are accurate and complete;
2. those statements furnished to the Company are representations the **Named Insured** made to the Company on behalf of all **Insureds**;
3. those representations are a material inducement to the Company to issue this policy;
4. the Company has issued this policy in reliance upon those representations;
5. this policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance; and
6. the Application or Renewal Application, including any attachments, and all other information and materials submitted by or on behalf of the **Insureds** to the Company in connection with the Company underwriting this policy, will be kept on file by the Company, deemed attached to this policy as if physically attached to it and shall become incorporated in and constitute a part of this policy.

O. Severability

With regard to the information provided on any insurance Application or Renewal Application, only facts pertaining to and knowledge possessed by any of the **First Named Insured's** chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, risk manager, in-house counsel or any person, whose signature appears on the Application or Renewal Application, shall be imputed to the **Insured**.

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

Secretary

President