



ACE American Insurance Company  
 Illinois Union Insurance Company  
 Westchester Fire Insurance Company  
 Westchester Surplus Lines Insurance Company  
**[LIST ONLY THE COMPANY THAT APPLIES]**

**ACE Advantage<sup>®</sup>**  
**Multimedia**  
**Liability Policy**  
**Declarations**

This Policy is issued by the stock insurance company listed above.

THE LIMITS OF LIABILITY SHALL BE REDUCED BY AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

<b>Policy No.</b>	
Item 1.	<b>Named Insured</b> Principal Address:
Item 2.	<b>Policy Period</b> From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)
Item 3.	Limit of Liability (including <b>Claims Expenses</b> ) \$ Each <b>Claim</b> \$ Aggregate Limit
Item 4.	Retention \$ Each <b>Claim</b>
Item 5.	Premium \$

Item 6.	Notice to <b>Company</b> :
	<p>A. Notice of <b>Claim</b> or <b>Multimedia Act</b>:</p> <p style="padding-left: 40px;">Company Address Address</p> <p>B. All other notices:</p> <p style="padding-left: 40px;">Company Address Address</p>
Item 7.	Endorsements Effective Upon <b>Policy</b> Inception:

IN WITNESS WHEREOF, the **Company** has caused this **Policy** to be countersigned by a duly authorized representative of the **Company**.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative

SPECIMEN



ACE American Insurance Company  
Illinois Union Insurance Company  
Westchester Fire Insurance Company  
Westchester Surplus Lines Insurance Company  
**[LIST ONLY THE COMPANY THAT APPLIES]**

## ACE Advantage<sup>®</sup> Multimedia Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms, conditions, limit of liability and other provisions of this **Policy**, the **Insureds** and the **Company** agree as follows:

### I. INSURING AGREEMENT AND DEFENSE

#### A. Insuring Agreement

The **Company** will pay on behalf of the **Insured** all sums in excess of the Retention that the **Insured** shall become legally obligated to pay, including liability **Assumed Under Contract**, as **Damages** and **Claims Expenses** because of a **Claim** against the **Insured** by reason of a **Multimedia Act** committed during the **Policy Period**.

#### B. Defense

1. The **Company** shall have the right and duty to defend any covered **Claim** brought against the **Insured** even if the **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the **Company**, such consent not to be unreasonably withheld; provided, however, the **Insured** may settle any **Claim** in which: (a) the **Damages** and **Claims Expenses**, together, do not exceed the Retention and (b) the settlement fully and finally resolves such **Claim** against all **Insureds**.
2. The **Company** has the right, but not the duty, to settle any covered **Claim** with the **Insured's** written consent.
3. The **Company's** duty to defend ends if the **Insured** refuses to consent to a settlement acceptable to the claimant/plaintiff and recommended to the **Insured** by the **Company**. Should the **Insured** refuse to provide its consent, the **Company** thereafter will have the right, but not the duty, to defend the **Claim**. If the **Company** elects not to defend following the **Insured's** refusal to consent to a settlement, the **Insured** shall assume the duty to defend at its own expense, with no right to reimbursement or indemnification from the **Company**, except as stated in this paragraph. Further, in the event the **Company** elects not to defend following the **Insured's** refusal, the **Company** shall within 30 days tender a check to the **Insured** for the recommended settlement amount and any other **Claims Expenses** incurred on or before the date the **Insured** refused to consent. Additionally, the **Company** will pay 50% of the **Insured's** post-refusal reasonable and necessary **Claims Expenses** incurred with the **Company's** written consent, such consent not to be unreasonably withheld. Notwithstanding, this paragraph shall not apply to either of (a) a settlement in which the total incurred **Damages** and **Claims Expenses** does not exceed the Retention, or (b) a lawsuit or arbitration proceeding arising from the **Insured's** reasonable and good faith exercise of its freedom of speech or freedom of the press under the First Amendment of the United States Constitution or any comparable U.S. State Constitution protecting free speech and free press.

4. The **Company** shall not be obligated to commence or continue to investigate, defend, pay, indemnify, reimburse or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Company** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Company** shall withdraw from the investigation, defense, payment or settlement of such **Claim** and shall tender the investigation, defense and control of such **Claim** to the **Insured**.
5. It is further agreed that **Company** bears no responsibility for **Damages** or **Claims Expenses** which are related to or arise as a result of any admissions of liability in connection with the **Insured's** withdrawal, alteration, recall, reprocessing, restoring, replacing, remediating, retracting, amending, reprinting, reproducing, correcting, or other modification to **Matter**.

## II. DEFINITIONS

- A. **Advertising** means any publicity, promotion, branding, co-branding, sponsorship, or endorsement on the **Insured's** own behalf or for others. However, **Advertising** shall not mean publicity or promotion of lotteries, sweepstakes, contests, or games of chance, including **Over-Redemption** relating thereto.
- B. **Application** means all applications, including any attachments thereto, 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** or any **Policy** of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
- C. **Assumed Under Contract** means:
  1. liability arising from **Multimedia Acts** which is assumed by the **Named Insured** in a written hold harmless or indemnity agreement executed with any third party prior to the commission of the **Multimedia Act** at issue, but only with respect to **Matter** provided by the **Named Insured** or by another person or entity with the **Named Insured's** prior written permission, and where such third party with whom the **Named Insured** has entered into such hold harmless or indemnity agreement has no common ownership interest or other affiliation with the **Named Insured**; or
  2. liability arising from a written contract or agreement whereby the **Named Insured** or a **Subsidiary** has agreed in writing to provide insurance under this **Policy**, but only if (a) the contract or agreement was executed prior to the commission of the **Multimedia Act** at issue, and (b) the **Multimedia Act** was for or on behalf of, and was previously authorized by, the **Named Insured** or a **Subsidiary**.
- D. **Bodily Injury** means physical injury to the body, physical pain, sickness, disease, and death. **Bodily Injury** also means mental distress, mental injury, mental anguish, mental tension, pain and suffering, shock and humiliation (collectively "**Mental Distress**"), but only if such **Mental Distress** arises from and is accompanied by injury to the claimant's body, sickness, disease or death.

E. **Claim** means:

1. a written demand against any **Insured** seeking monetary **Damages**, services, or non-monetary or injunctive relief, including retraction of **Matter**;
2. a civil proceeding against any **Insured** for monetary **Damages**, services, or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. a binding arbitration proceeding to which the **Company** has provided its prior written consent against any **Insured** for monetary **Damages** or non-monetary or injunctive relief; and
4. a subpoena seeking from an **Insured**: (a) **Matter** used or intended to be used in a **Publication, Broadcast or Transmission**, or (b) the name of a third-party who provided to the **Insured** confidential information or material intended for use or used in a **Publication, Broadcast or Transmission**.

F. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Company**, or by the **Insured** with the **Company's** prior written consent, in the investigation and defense of covered **Claims**; and
2. premiums for any appeal bond, attachment bond or similar bond, provided the **Company** shall have no obligation to apply for or furnish such bond.

**Claims Expenses** shall not include wages, salaries, fees or costs of directors, officers or employees of the **Company** or an **Insured**.

G. **Company** means the insurance company providing this insurance.

H. **Damages** means any compensatory amount which the **Insured** becomes legally obligated to pay on account of a covered **Claim**, including judgments, settlements to which the **Company** has consented in writing, and prejudgment and post-judgment interest awarded which arises from the portion of any judgment which is to be paid under this **Policy** (up to the **Policy's** limit of liability). Subject to the **Policy's** terms, conditions, limit of liability, and other provisions, **Damages** also shall mean punitive, exemplary, and the multiple portion of multiplied **Damages** to the extent such **Damages** are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the **Company**, this **Policy** or such **Claim**. **Damages** shall not include:

1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines, penalties or liquidated damages;
3. matters uninsurable under the law pursuant to which this **Policy** is construed;
4. past, present and future earned and unearned royalties and profits, including disgorgement of royalties and profits by an **Insured**;

5. the costs incurred or to be incurred by or on behalf of an **Insured** in connection with the withdrawal, alteration, recall, reprocessing, restoration, replacement, retraction, amendment, reprinting, reproduction, remediation, correction, or other modification of **Matter**;
6. the costs incurred or to be incurred by or on behalf of an **Insured** in connection with the past, present or future performance of any services, including the return, reduction or offset of fees, charges, or commission for goods or services already provided or to be provided; or
7. the costs and expenses required to comply with any injunctive or other non-monetary, equitable or declaratory relief, including specific performance, or any agreement to provide such relief.

I. **Insured** means:

1. the **Named Insured**;
2. any **Subsidiary**;
3. any past or present or future principal, partner, officer, director, stockholder, trustee or employee of the **Named Insured** or **Subsidiary** (and, in the event the **Named Insured** or **Subsidiary** is a partnership, limited liability partnership, or limited liability corporation, any principal or managing or general partner thereof), but only with respect to **Matters** within the scope of the individual's duties as such with respect to the provision of **Media Services** on behalf of the **Named Insured** or **Subsidiary**;
4. the estate, heirs, executors, administrators or legal representatives of any **Insured** described in paragraph 3 above in the event of such **Insured's** death, incapacity, insolvency, or bankruptcy but only to the extent that such **Insured** would otherwise be provided coverage under this **Policy**; and
5. agents, independent contractors, third-party distributors, licensees, and sub licensees, but only with respect to **Media Services** which are (a) intended for or used in the **Named Insured's** or a **Subsidiary's Publication, Broadcast or Transmission**, and (b) performed for or on behalf of, and was previously authorized in writing by, the **Named Insured** or a **Subsidiary**, and (c) **Assumed Under Contract**.

J. **Interrelated Multimedia Acts** means all **Multimedia Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

K. **Matter** means multimedia content, regardless of its nature or form, used in **Scheduled Media** by or for the **Named Insured** or a **Subsidiary**.

L. **Media Services** means the collection, research, preparation, compilation, creation, investigation, acquisition, production, serialization, release, exhibition, display, performance, preparation, printing, distribution, licensing, sale, broadcast, publication, transmission, utterance, or **Advertising** of **Matter** through the use of **Scheduled Media** that results in a **Claim** for **Damages** arising from a **Multimedia Act**.

- M. **Mediation** means a non-binding process in which a neutral panel or individual assists the parties in reaching a settlement agreement. To be considered **Mediation** under this **Policy**, the process must be as set forth in the Commercial Mediation Rules of the American Arbitration Association, or such other process as the **Company** may, at its sole option, approve.
- N. **Multimedia Act** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured** with respect to **Media Services**, which gives rise to any of the following **Claims** against an **Insured**:
1. infringement of copyright, plagiarism, piracy or misappropriation of ideas;
  2. infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
  3. breach of any express or implied contract arising out of the alleged submission by someone who is not an **Insured** of any material, idea or process (including any newsworthy, literary, dramatic, musical, audio, audiovisual, visual or other similar or analogous material or process used by the **Insured** or others), or breach of trust or confidence arising out of such submission, provided the **Named Insured** or a **Subsidiary** had formally requested or authorized the submission, in writing, before receipt;
  4. false arrest, detention or imprisonment, malicious prosecution;
  5. libel, slander or other defamation;
  6. invasion or infringement in violation of an individual's right to privacy or publicity;
  7. wrongful entry or eviction, trespass or other invasion of the right to private occupancy;
  8. negligent infliction of emotional distress or outrage in connection with **Matter**;
  9. damage suffered a third party with no ownership relationship with the **Insured**, who has acted upon or made a decision or decisions based on the content of **Matter** published, broadcast or transmitted by the **Insured** or with the **Insured's** written permission;
  10. unfair competition but only when the actual or alleged unfair competition is based solely on 1, 2, 5, 6, or 7, above;
  11. breach of a confidentiality agreement which requires an **Insured** to maintain the confidentiality of a person or entity who (a) has provided confidential information or documents to the **Insured** for unattributed use in a **Publication, Broadcast or Transmission**, and (b) is not an **Insured** under this **Policy**;
  12. negligent supervision of an employee when alleged in connection with a **Claim** for **Damages** otherwise covered under one or more of sub-sections 1-11 above;
  13. negligence in the quality or accuracy of **Matter** actually or intended to be published, broadcast or transmitted;
  14. the **Named Insured's** or a **Subsidiary's** negligence in rendering or failing to render professional services in connection with **Matter**.

- O. **Named Insured** means the entity or person specified in Item 1 of the Declarations Page.
- P. **Over-Redemption** means price discounts, prizes, awards, coupons, concessions, or other valuable consideration given in excess of the aggregate contracted or expected amount.
- Q. **Personal Information** means an individual's name, social security number, medical or healthcare data, other protected health information, drivers license number, state identification number, credit card number, debit card number, address, telephone number, account number, account histories, passwords, or other nonpublic personal information as defined in **Privacy Regulations**. **Personal Information** shall not include information that is lawfully made available to the general public for any reason, including but not limited to information from federal, state or local government records.
- R. **Policy** means, collectively, the Declarations Page, the **Application**, and this **Policy**, including any endorsements.
- S. **Policy Period** means the period of time specified in Item 2 of the Declarations Page, subject to prior termination pursuant to Section V. F. Termination.
- T. **Pollutants** means any substance 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 federal, state, county or municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.
- U. **Privacy Regulations** means the following statutes and regulations associated with the care, custody, control or use of personally identifiable financial, medical or other sensitive information:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191);
  2. Gramm-Leach-Bliley Act of 1999;
  3. California Security Breach Notification Act (CA SB 1386); and
  4. other similar state, federal, and foreign identity theft and privacy protection legislation that requires commercial entities that collect **Personal Information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **Personal Information** has potentially been compromised.
- V. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; or
  2. loss of use of tangible property which has not been physically injured, lost, damaged or destroyed.

- W. **Publication, Broadcast or Transmission** means the dissemination of **Matter** through **Scheduled Media**.
- X. **Scheduled Media** means the vehicle through which **Matter** is published, broadcast or transmitted by an **Insured**, including but not limited to, television, motion picture, cable, satellite television, radio, wireless devices, the internet, newspapers, newsletters, books, magazines, and other literary monograph, brochures, directories, screen plays, film scripts, playwrights, and video publications, including any related electronic or digital versions, or incidental, supplemental or special editions.
- Y. **Subsidiary** means any entity that is not formed as a partnership or joint venture of which the **Named Insured** owns or has the right to vote more than 50% of the outstanding voting securities representing the present right to vote for election of directors, or the managers or members of the board of managers or equivalent executives of a limited liability company, on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.
- Z. **Technical Assault** means any unauthorized intrusion, unauthorized access, unauthorized use, tampering, corruption, breach of security, use of harmful or malicious code, denial of service attack, use of a harmful or malicious virus or program such as a worm, time bomb, logic bomb, malware, or Trojan Horse or other virus or program that causes or may cause damage of any kind to the technical or computer systems, hardware, software, firmware, shareware, electronic data, and any components thereof, under the ownership, operation, custody, or control of an **Insured**, including networks, intranet systems, extranet systems, internet systems, security systems, and electronic data.
- AA. **Wrongful Employment Practices** means any actual or alleged:
1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
  2. employment-related misrepresentation;
  3. violation of any federal, state, or local laws (whether common or statutory) concerning employment or discrimination in employment;
  4. sexual harassment or other unlawful workplace harassment;
  5. wrongful deprivation of a career opportunity or failure to employ or promote;
  6. wrongful discipline of employees;
  7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
  8. negligent evaluation of employees;
  9. failure to adopt adequate workplace or employment policies and procedures;
  10. employment-related libel, slander, defamation, or invasion of privacy;
  11. employment-related wrongful infliction of emotional distress;

12. any actual or alleged discrimination, sexual harassment, or violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

### III. EXCLUSIONS

The **Company** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. alleging, based upon, arising out of, or attributable to any dishonest, fraudulent, criminal or malicious act or omission, or any intentional or knowing violation of the law by an **Insured** ("**Excluded Conduct**"); however, this exclusion shall not apply to **Claims Expenses** or the **Company's** duty to defend any such **Claim** unless and until there is an adverse admission by, finding of fact, or final adjudication against any **Insured** as to such **Excluded Conduct**, at which time the **Insured** shall reimburse the **Company** for all **Claims Expenses** incurred.

Notwithstanding the foregoing, this exclusion shall not bar coverage for any **Claim** which otherwise is covered by this **Policy** to the extent that:

1. Prior to the date the **Insured** engaged in such **Excluded Conduct**, the **Insured** had received from its retained outside legal counsel a written opinion and authorization stating that based on counsel's good faith and reasonable legal evaluation and analysis of the existing law, counsel has concluded that such conduct was legal under and protected by the First Amendment of the United States Constitution or any similar provision of a State Constitution protecting freedom of speech and/or freedom of the press; and
  2. the **Claim** alleges actual malice, as defined by the law, in conjunction with allegations of defamation, libel or slander of a public person, as defined by the law.
- B. alleging, based upon, arising out of, or attributable to **Bodily Injury** or **Property Damage**.
  - C. alleging, based upon, arising out of, or attributable to any breach of contract or agreement, or any liability assumed under any express, implied, actual, constructive, oral or written contract, agreement, warranty, guarantee or promise including, but not limited to, any contract price, cost guarantee or cost estimate being exceeded, unless such liability:
    1. is **Assumed Under Contract**;
    2. would have attached to the **Insured** even in the absence of such contract, agreement, warranty, guarantee or promise;
    3. arises from the **Insured's** alleged breach of an agreement requiring the **Insured** to maintain as confidential the identity of any third party who (a) provided the **Insured** with confidential information or documents for unattributed use in a **Publication, Broadcast or Transmission**, and (b) is not an **Insured** under this **Policy**; or

4. is for breach of any express or implied contract arising out of the alleged submission of any material, idea or process in the provision of **Media Services** and the **Named Insured** or a **Subsidiary**, in writing, had requested or authorized the submission before it was submitted.
- D. alleging, based upon, arising out of, or attributable to any dispute involving fees, expenses or costs paid to or charged by an **Insured**, or royalties or other payments due from or owed by an **Insured**.
- E. brought or maintained by, on behalf of, or in the right of any **Insured**, including (a) any person or entity controlled, managed, owned or operated by an **Insured**, or (b) any person or entity in which an **Insured** was a partner, director, officer or employee, or (c) any parent entity, **Subsidiary**, predecessor, successor, or assignee, or (d) any person or entity affiliated with an **Insured**, in whole or in part, directly or indirectly, including through common majority control, ownership, management or operation; provided, however, this exclusion shall not apply to **Claims** brought by persons or entities who are **Insureds** exclusively by virtue of Definition 5 of **Insured**, as defined in **Policy** Section II.I.
- F. alleging, based upon, arising out of, or attributable to any **Wrongful Employment Practice**.
- G. alleging, based upon, arising out of, or attributable to any discrimination on any basis, including, but not limited to, race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sexual orientation or pregnancy.
- H. alleging, based upon, arising out of, or attributable to any price fixing, restraint of trade, monopolization, unfair trade practices, unfair competition, deceptive or unfair business practices, or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act and any amendments thereto or any rules or regulations promulgated thereunder, or any other federal, state, local, or foreign statutory or common law involving antitrust, monopoly, price fixing, price discrimination, predatory pricing, consumer protection, privacy or restraint of trade, provided, however, this exclusion shall not apply to any otherwise covered **Claim** alleging (a) common law unfair competition based on the conduct identified at Definitions 1, 2, 5, 6 and 7 of **Multimedia Act**, as defined in Policy Section II.N., or (b) deceptive or unfair business practices arising from a **Multimedia Act** involving the **Insured's** gathering or collection of **Matter** used or intended to be used in **Scheduled Media**.
- I. alleging, based upon, arising out of, or attributable to any alleged or actual violation of any of the following laws, as well as any rules or regulations promulgated thereunder, amendments thereto, or any similar federal, state, local or foreign statutory or common law:
1. the Employee Retirement Income Security Act of 1974;
  2. the Telephone Consumer Protection Act of 1991;
  3. the Fair Credit Reporting Act;
  4. the Drivers Privacy Protection Act; and
  5. the Racketeering Influenced and Corrupt Organizations Act of 1970.

- J. alleging, based upon, arising out of, or attributable to any: (a) alleged purchase, sale offer of, or solicitation of an offer to purchase or sell any security or (b) alleged violation of any federal, state, local or foreign statutory or common securities law, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act, any state "Blue Sky" law, and any rules or regulations promulgated thereunder or amendments thereto.
- K. alleging, based upon, arising out of or attributable to any false or deceptive advertising or promotion, misrepresentation in **Advertising** or promotion of an **Insured's** products or services, comparative **Advertising**, or any **Multimedia Act** relating to, involving or giving rise to comparative **Advertising**, including any wrong description of the price or authenticity of any goods or services, or the failure of any goods or services to conform with the standards of quality or performance.
- L. alleging, based upon, arising out of, or attributable to the gaining in fact of any profit or advantage to which the **Insured** is not legally entitled.
- M. alleging, based on, arising out of, or attributable to any costs, expenses, **Damages** or **Claims Expenses** incurred or to be incurred by or on behalf of an **Insured** in connection with the alteration, upgrade, enhancement, remediation, repair, alteration, improvement, modification, or change to or in connection with the **Insured's** hardware, software, firmware, shareware, and any components thereof, including computer systems, technical systems, networks, intranet systems, extranet systems, internet systems, security systems, electronic data ("**Technical Problems**"), irrespective of whether such **Technical Problems** were caused by, relate to or involve a **Technical Assault**.
- N. alleging, based on, arising out of, or attributable to a **Technical Assault**.
- O. alleging, based upon, arising out of, or attributable to any **Multimedia Act**, fact, circumstance, situation event, transaction or cause which has been reported or noticed to any other insurance carrier.
- P. alleging, based upon, arising out of, or attributable to any prior or pending litigation, **Claim**, demand, arbitration, proceeding or investigation presented, transmitted, filed or commenced on or before the inception date of this **Policy**, or alleging or derived from the same or substantially the same fact, circumstance, event, situation, transaction, cause or situation underlying or alleged therein.
- Q. alleging, based upon, arising out of, or attributable to:
1. the actual or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- R. alleging, based upon, arising out of, or attributable to the validity, invalidity, infringement, violation, theft, use or misappropriation of any patent or trade secret.
- S. alleging, based upon, arising out of, or attributable to the validity, invalidity, infringement, violation, theft, use or misappropriation of any copyright, service mark, trademark, or trade name of or in connection with software.

- T. alleging, based upon, arising out of, or attributable to any **Claim**, proceedings, or actions brought by or orders imposed by or from:
1. ASCAP, SESAC, BMI, RIAA, or other music licensing organizations;
  2. the Federal Trade Commission or any similar foreign government agency, body, office or organization;
  3. the Federal Communication Commission or any similar foreign government agency, body, office or organization;
  4. any other federal, state, local or foreign government agency, body, office or organization.
- U. alleging, based upon, arising out of, or attributable to, directly or indirectly, the failure of any satellite or satellite component.
- V. alleging, based upon, arising out of, or attributable to, directly or indirectly, any theft, misappropriation, loss, accidental disclosure, wrongful or unauthorized access, purchase, sale, exchange or provision of **Personal Information**.
- W. alleging, based upon, arising out of, or attributable to **Over-Redemption**.
- X. alleging, based upon, arising out of, or attributable to any unsolicited dissemination of faxes, e-mails or other communications to multiple actual or prospective customers of the **Insured**, any **Subsidiary**, or any other third party, including but not limited to actions brought under any federal, state, local or foreign anti-spam statutes, and/or any other federal, state, local or foreign statute, law or regulation relating to a person's or entity's right of seclusion or privacy.

#### IV. LIMITS OF LIABILITY AND RETENTION

##### A. Limits

1. All **Claims** arising out of the same **Multimedia Act** and all **Interrelated Multimedia Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claim** is first made, regardless of whether such date is before, during, or after the **Policy Period**.
2. In the event multiple policies are issued by the **Company** or any of its affiliates (collectively, **Insurer's Policy**), and more than one of such policies may cover a **Claim** or **Claims** arising out of the same **Multimedia Act** or **Interrelated Multimedia Acts** that occur or continue to occur during more than one policy period, all such **Multimedia Acts** or **Interrelated Multimedia Acts** shall be deemed to have occurred only during the policy period when the earliest of such **Multimedia Acts** or **Interrelated Multimedia Acts** took place, and only the limit of liability of the **Insurer's Policy** which was in effect during that first policy period shall apply.
3. The Each **Claim** Limit stated in Item 3 of the Declarations shall be the maximum aggregate liability of the **Company** for all **Damages** and **Claims Expenses** because of each **Claim**, including each **Claim** alleging any **Interrelated Multimedia Acts**.

4. The Aggregate Limit stated in Item 3 of the Declarations shall be the maximum aggregate liability of the **Company** for all **Damages** and **Claims Expenses** because of all **Claims**, including all **Claims** alleging any **Interrelated Multimedia Acts**.
5. **Claims Expenses** shall be part of and not in addition to the Aggregate Limit of Liability shown in Item 3 of the Declarations, and shall reduce such Aggregate Limit of Liability.
6. If the Limit of Liability is exhausted by payment of **Damages** or **Claims Expenses**, the obligations of the **Company** under this **Policy** shall be completely fulfilled and extinguished.

B. Retention

1. The liability of the **Company** shall apply only to that part of **Damages** and **Claims Expenses** which are excess of the Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk.
2. A single Retention amount shall apply to **Damages** and **Claims Expenses** arising from all **Claims** alleging **Interrelated Multimedia Acts**.

V. CONDITIONS

A. Notice

1. The **Insured** shall, as a condition precedent to its rights under this **Policy**, give to the **Company** written notice of any **Claim** as soon as practicable.
2. The **Insured** shall take all necessary and practical actions to prevent, terminate, discontinue and limit the collection, gathering, publication, broadcast, transmission, creation, distribution, performance, exhibition, preparation, production, printing, display, release, serialization and research of **Matter** that is erroneous, improper, false or untrue. If the **Named Insured** acts in good faith and in an effort to mitigate any potential liability arising from a **Multimedia Act** involving **Media Services** by withdrawing, altering, recalling, reprocessing, restoring, replacing, remediating, retracting, amending, reprinting, reproducing, correcting, or otherwise modifying the subject **Matter**, such activity by an **Insured** shall not be considered a breach of the provisions of Section I.B.1. of this **Policy**.
3. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Company** of any **Claim** or **Multimedia Act** shall be given to the **Company** at the address set forth in Item 6A of the Declarations. All other notices to the **Company** under this **Policy** shall be given to the **Company** at the address set forth in Item 6B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.

B. Assistance and Cooperation

1. The **Insureds** shall cooperate with the **Company**, and provide to the **Company** all information and assistance which the **Company** reasonably requests, including, without limitation, providing the **Company** with all documents, information, and access to people and locations requested by the **Company** in conjunction with the **Company's** coverage investigation and evaluation, attending hearings, depositions and trials and assisting in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**, and enforcing all legal rights against persons and/or entities who may be liable to the **Insured**. The **Insured** shall do nothing that may prejudice the **Company's** position.
2. An **Insured's** rights under this **Policy** with respect to a **Claim** shall not be prejudiced should the **Insured** refuse to reveal the identity of a person or entity who (a) has provided confidential information to the **Insured** for use in **Scheduled Media**, and (b) is not an **Insured** under this **Policy**.

C. Other Insurance

If any **Damages** or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages** or **Claims Expenses**, subject to its terms and conditions, only to the extent that the amount of such **Damages** or **Claims Expenses** is in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

D. Representations

1. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:
  - a) are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
  - b) shall be deemed material to the acceptance of this risk or the hazard assumed by the **Company** under this **Policy**.

It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

2. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or hazard assumed by the **Company** under this **Policy**, this **Policy** shall be void ab initio.

E. Termination

1. This **Policy** shall terminate at the earliest of the following times:
  - a) the effective date of termination specified in a prior written notice by the **Named Insured** to the **Company**;

- b) 60 days after receipt by the **Named Insured** of a written notice of termination from the **Company**;
  - c) 10 days after receipt by the **Named Insured** of a written notice of termination from the **Company** for failure to pay a premium when due, unless the premium is paid within such 10 day period;
  - d) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
  - e) at such other time as may be agreed upon by the **Company** and the **Named Insured**.
2. If the **Policy** is terminated by the **Named Insured**, the **Company** shall refund the unearned premium computed at the customary short rate. If the **Policy** is terminated by the **Company**, the **Company** shall refund the unearned premium computed pro rata. Payment or tender of any unearned premium by the **Company** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

F. Territory and Valuation

- 1. Coverage under this **Policy** shall extend to **Multimedia Acts** taking place anywhere in the world, provided that the **Claim** is made within the jurisdiction, and subject to the substantive laws of, the United States of America, Canada, or their territories or possessions.
- 2. All premiums, limits, retentions, **Damages**, **Claims Expenses** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Damages** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in The Wall Street Journal as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Damages** is due, respectively or if not published on such date, the next date of publication of The Wall Street Journal.

G. Subrogation

In the event of any payment under this **Policy**, the **Company** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Company** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

H. Action Against the **Company** and Bankruptcy

No action shall lie against the **Company**. No person or organization shall have any right under this **Policy** to join the **Company** as a party to any action against any **Insured** to determine the liability of the **Insured**, nor shall the **Company** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Company** of its obligations nor deprive the **Company** of its rights or defenses under this **Policy**.

I. Authorization

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving of notice of **Claim**, the giving or receiving of notice of termination or non renewal, the payment of premiums, the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Named Insured** shall so act on their behalf.

J. Alteration, Assignment and Headings

1. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this **Policy** nor prevent the **Company** from asserting any right under the terms of this **Policy**.
2. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Company**.
3. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

K. Interpretation

The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions of this **Policy**, without regard to the authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either any **Insured** or the **Company**, and without reference to the reasonable expectations of either the **Insured** or the **Company**.

VI. ALTERNATIVE DISPUTE RESOLUTION

- A. The **Insureds** and the **Company** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof, to the alternative dispute resolution ("ADR") process set forth in this Section.
- B. Either an **Insured** or the **Company** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Company** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.
- C. There shall be two choices of ADR process:
  1. non-binding **Mediation** administered by any **Mediation** facility to which the **Company** and the **Insured** mutually agree, in which the **Insured** and the **Company** shall try in good faith to settle the dispute by **Mediation** in accordance with the then-prevailing commercial **Mediation** rules of the **Mediation** facility; or

2. arbitration submitted to any arbitration facility to which the **Insured** and the **Company** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either **Mediation** or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the **Matters** in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of **Mediation**, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the **Mediation** shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

- D. Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this Section.

## VII. MATERIAL CHANGES IN CONDITIONS

- A. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Named Insured**:

1. acquires voting securities in another organization or creates another organization, which, as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with the **Named Insured**,

then, subject to the terms and conditions of this **Policy**, such organization shall be covered under this **Policy** but only with respect to **Multimedia Acts** taking place after such acquisition or creation, unless the **Company** agrees to provide coverage by endorsement for **Multimedia Acts** taking place prior to such acquisition or creation.

If the total revenue of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization, exceeds 10% of the total revenue of the **Named Insured** and the **Subsidiaries**, as reflected in the then most recent consolidated financial statements of the **Named Insured**, the **Named Insured**, as a condition precedent to coverage with respect to such acquired or created organization, shall, no later than 60 days after the effective date of such acquisition or creation:

- a) give written notice of such acquisition or creation to the **Company**;
- b) pay any additional premium required by the **Company**; and
- c) agree to any additional terms and conditions of this **Policy** as required by the **Company**.

B. Acquisition of the **Named Insured**

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of a) the directors of the **Named Insured** if a corporation; b) the management committee members of the **Named Insured** if a partnership; c) the management board of the **Named Insured** if a limited liability company;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Multimedia Acts** taking place after the inception of the **Policy Period** but prior to such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Multimedia Acts** taking place after such event.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Multimedia Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.