

|   |  |   |
|---|--|---|
| <b>OneBeacon</b><br>PROFESSIONAL INSURANCE™ | New Empire Entertainment Insurance Services Inc.<br>1611 South Catalina Ave, Suite 208<br>Redondo Beach, CA 90277<br>(310) 265-3800 Fax (310) 265-3805 |  |
|   | www.neeis.com License No. 0G13492  |   |
| 03.14.2013                                  | <b>RE: Pulse Pictures, LLC</b><br>Media Professional Liability   |   |

**Broker**

Greg Zeboray  
Zeboray Insurance Services  
P.O. Box 1044  
San Clemente, CA 92674

**Applicant**

Pulse Pictures, LLC  
20339 Nordhoff Street  
Chatsworth, CA 91311

Hello.

OneBeacon Professional Insurance is pleased to provide the following Media Professional Liability quotation to you for Pulse Pictures, LLC. We hope that you will provide us the opportunity to discuss the full breadth of our capabilities with you in further detail as it is our desire to exceed your expectations. Jan Holland is available to assist you with anything else you may need.

**Policy Term** | One Year Term

**Media Professional Liability**

Limits of Liability  
*Defense Costs are Within the Limits of Liability*

|                       |             |
|-----------------------|-------------|
| Each Occurrence       | \$5,000,000 |
| Policy Term Aggregate | \$5,000,000 |

**Retention** | Each Occurrence \$25,000

**Premium**

\$6,531  
Premium is due and payable no later than forty-five (45) days after the date of binding. Failure to pay the premium in full may result in cancellation of coverage.

**Scheduled Media** | Third party matter distributed under license agreement by the Insured during the policy term

**Policy Endorsements**

|                                    |   |
|------------------------------------|---|
| OBPP-KCP-202F 05.05<br>(Rev. 8.05) | Additional Insured Primary Coverage Endorsement     |
| OBPP-KCP-220F 8.05                 | Film and Program Distributor Amendatory Endorsement |
| OBPP-KCP-230F 05.05<br>(Rev. 8.05) | Named Peril Coverage Endorsement                    |
| OBPP-KCP-237F 07.05<br>(Rev. 8.05) | Omnibus Exclusionary Endorsement                    |
| OBPP-KCP-243F 5.05<br>(Rev. 8.05)  | Professional Services Amendatory Endorsement        |
| OBPP-KCP-251F 05.05                | Selection of Counsel Endorsement                    |
| OBPP-KCP-01FCA 8.05                | California Cancellation & Non-Renewal Provisions    |

Reference Index: Account Number **105443** Submission Id **305928**

|                               |  |
|-------------------------------|--|
| <b>Insurance Company</b>      | Atlantic Specialty Insurance Company<br>This is an admitted policy.  |
| <b>Policy Form</b>            | OBPP-KC-G16728 8-05<br>Media Advantage Policy®   |
| <b>Quote Expiration Date</b>  | 04.14.2013   |
| <b>Conditions</b>             | <p>This quote is subject to OneBeacon Professional Insurance's receipt, review and acceptance of the outstanding conditions noted below prior to binding. The underwriter may elect at its discretion to accept an order to bind subject to receipt of such outstanding conditions within a specified timeframe.</p> <ul style="list-style-type: none"> <li>• Copy of the agreement used with 3rd party studios/producers - <b>PRIOR TO BINDING</b></li> </ul>   |
| <b>Additional Information</b> | <ul style="list-style-type: none"> <li>• Terms are being offered on Admitted Paper.</li> </ul>   |
| <b>Commission</b>             | <p>6.0%</p> <p>It is the general practice of OneBeacon Professional Insurance to show a commission related legend on each binder and policy that is issued. In both instances, the following will appear with an "X" in the appropriate space.</p> <p><b>X    Gross Premium</b><br/>The Underwriter will pay a percentage of the premium shown above as brokerage commission. The Underwriter does not pay contingent or deferred commissions. Consult your broker for information concerning commission.</p> <p><b>—    Net Premium</b><br/>The premium shown above is net, and the Underwriter will pay no brokerage commission of any kind thereon.</p> |
| <b>General</b>                | The coverage descriptions contained in this quotation are for summary purposes only. Please read the policy for complete coverage information.   |
| <b>Underwriter Contact</b>    | Andee Abad<br>(310) 265-3801<br><a href="mailto:andee@neesis.com">andee@neesis.com</a>   |

Please remember that Jan welcomes your call and the opportunity to assist you.

Thank you again for the opportunity to provide this quotation. You may also visit [onebeaconpro.com](http://onebeaconpro.com) to obtain further information regarding OneBeacon Professional Insurance's specific product offerings, client services and other company information.

## **Supplemental Information**

### **Risk Management**

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

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

### **Why OneBeacon Professional Insurance?**

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

**SPECIMEN**

## **ADDITIONAL INSURED PRIMARY COVERAGE ENDORSEMENT**

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies insurance provided under the following:

### MEDIA ADVANTAGE POLICY®

The **Named Insured** and the **Company** agree that TVN Entertainment Corporation dba Avail-TVN is added to the policy as an **additional insured**, but only with respect to **claims** directly arising from **matter** or services provided by the **Named Insured** or **subsidiary**.

This policy is primary and not excess of or contributory to any other insurance provided for the benefit of or by the **additional insured**.

As respects **claims** arising under this endorsement, SECTION III — EXCLUSIONS is amended to add the following:

against an **insured** that is brought by or on behalf of another **insured** or any business entity that is owned, managed or operated, directly or indirectly, by an **insured**, or any parent company, **subsidiary**, successor or assignee of an **insured**, or anyone affiliated with an **insured** or such business through common and controlling interest; however, this exclusion shall not apply if such business entity is an **insured's** customer bringing the **claim** in that capacity and acting without the solicitation, assistance, participation or intervention of any **insured**;

for or arising from allegations of direct liability (as opposed to vicarious liability) on the part of the **additional insured**;

for or arising out of **matter** or services provided by the **additional insured**.

As respects claims arising under this endorsement, SECTION V – CONDITIONS, **Subrogation**, is amended to add the following

The **Company** shall have no rights of subrogation against the **additional insured** with regard to **matter** provided by the **Named Insured**.

All other terms, conditions and exclusions remain unchanged.

### **COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:**

|                            |                           |  |
|----------------------------|---------------------------|--|
| Named<br>Insured           |                           | Policy<br>Number                                 |
| Endorsement<br>Number      | Policy Expiration<br>Date | Effective Date<br>of Endorsement                 |
| Additional<br>or<br>Return | Premium \$ _____ x _____  | Short Rate _____ = _____ AP<br>Pro Rate _____ RP |

Typing Date: \_\_\_\_\_

Authorized Representative

**SPECIMEN**

## FILM AND PROGRAM DISTRIBUTOR AMENDATORY ENDORSEMENT

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies the insurance provided under the following:

MEDIA ADVANTAGE POLICY®  
ADVERTISER ADVANTAGE POLICY®  
ADVERTISING AGENCY LIABILITY POLICY

SECTION II – DEFINITIONS, “**Occurrence**”, is deleted in its entirety and replaced with the following:

**Occurrence** means:

1. the release, distribution, licensing, sale, lease or exhibition of **scheduled media** or **advertising** produced by third parties pursuant to a distributor's agreement;
2. the release, distribution, licensing, sale, lease or exhibition of the **insured's** previously released film library, if specifically scheduled in the policy's Declarations as **scheduled media** or **scheduled advertising**; or
3. **advertising** by or on behalf of the **insured**.

**Occurrences** that take place on one or more dates during the **policy term**, or during two or more consecutive policies issued by the **Company**, involving the same or related subject, event, situation, person or class of persons, irrespective of the number of repetitions, versions or forms of said **occurrence**, shall be considered a single **occurrence**. The Limits of Liability and Retention in effect when the first **occurrence** took place shall apply.

SECTION III — EXCLUSIONS is amended to add the following:

The **Company** shall not be obligated to defend or to pay **loss** or **defense costs** from **claims** arising from or in any way related to **matter** produced by the **insured** or any **subsidiary**, unless specifically scheduled to the policy.

All other terms, conditions and exclusions remain unchanged.

**COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:**

|                            |                          |  |
|----------------------------|--------------------------|--|
| Named Insured              |                          | Policy Number                            |
| Endorsement Number         | Policy Expiration Date   | Effective Date of Endorsement            |
| Additional<br>or<br>Return | Premium \$ _____ x _____ | Short Rate _____ AP<br>Pro Rate _____ RP |
| Typing Date                |                          |  |

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

## NAMED PERIL COVERAGE ENDORSEMENT

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies insurance provided under the following:

MEDIA ADVANTAGE POLICY®  
COMMUNICATOR'S ADVANTAGE POLICY™  
NEWSPAPER ADVANTAGE POLICY®

SECTION I — COVERAGE AGREEMENT A is deleted in its entirety and replaced with the following:

### A. Communications and Personal Injury Liability

The **Company** shall pay on behalf of the **insured** all **loss** in excess of the Retention and within the Limit 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 **claims** arising from an **occurrence** committed by the **insured** during the policy term in or for **scheduled media** or **scheduled publications** and arising from:

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. negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
4. trespass, wrongful entry or eviction;
5. false arrest or imprisonment, abuse of process, detention or malicious prosecution;
6. harassment or stalking;
7. violations of the Fourth Amendment to the U.S. Constitution or other equivalent state statute preventing unreasonable searches and seizures relating to newsgathering;
8. breach of confidentiality of any oral, written or implied agreement, however styled in a **claim**, arising from the failure to maintain the confidentiality of a source or the materials furnished by a source, or from the failure to portray a source or subject in a certain manner or light;
9. infringement of copyright, plagiarism, **piracy** and misappropriation of ideas under implied contract or other misappropriation of ideas or information;
10. infringement or dilution of trademark, **title**, slogan, trade name, trade dress, service mark or service name;
11. unfair competition, but only when alleged in a **claim** covered under one or more subparts 1 - 10 above;
12. deceptive trade practices or fraud, whether statutory, regulatory or at common law, but only when alleged in a **claim** covered under one or more of subparts 1 - 11 above and when the acts giving rise to such causes of action had been previously approved by the **insured's** counsel or duly authorized supervisor;

# SPECIMEN

13. conspiracy, but only when alleged in a **claim** covered under one or more subparts 1 – 11 above;
14. breach of an indemnification or hold harmless agreement, but only when alleged in a **claim** covered under one or more of subparts 1 – 11 above;
15. negligent supervision of an employee, but only when alleged in a **claim** covered under one or more subparts 1-11 above;
16. any contempt order, but only if the **insured's** counsel had previously authorized such act or omission based upon a good faith belief that the court order violated the First Amendment to the United States Constitution or any provision of a State Constitution protecting freedom of speech and press or that the act or omission was not a violation of such court order;

any legal or equitable proceeding relating to spoliation of evidence arising from the innocent destruction and/or recycling of the **insured's matter**.

All other terms, conditions and exclusions remain unchanged.

## COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

|   |                        |  |
|---|------------------------|--|
| Named Insured                                       |                        | Policy Number  |
| Endorsement Number                                  | Policy Expiration Date | Effective Date of Endorsement                          |
| Additional<br>or Premium \$ _____ x _____<br>Return |                        | Short Rate _____ AP<br>= _____ RP<br>Pro Rate _____ RP |
| Typing Date _____                                   |                        |  |

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

# OMNIBUS EXCLUSIONARY ENDORSEMENT

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies insurance provided under the following:

NEWSPAPER ADVANTAGE POLICY®  
MEDIA ADVANTAGE POLICY®  
COMMUNICATOR'S ADVANTAGE POLICY™  
ADVERTISING AGENCY LIABILITY POLICY  
ADVERTISER ADVANTAGE POLICY®

SECTION III — EXCLUSIONS is amended to add the following checked coverage exclusions, which shall take precedence where in conflict:

- for or arising from business services provided by the **insured** or a third party, including but not limited to the sale and delivery of products or services, business referrals, the failure to ensure transaction security or the failure to provide or render such services. This exclusion, however, shall not be construed to exclude coverage for **claims** arising from the content of **matter** scheduled to the policy;
- for or arising out of consulting;
- for or arising out of professional, emotional or religious counseling;
- for or arising out of any actual or alleged harassment or discrimination because of race, association, age, sex, sexual orientation, national origin, citizenship, ethnicity, ancestry, religion, physical or mental disability or marital or economic status;
- for or arising from the following film clip(s) and/or photograph(s) contained in \_\_\_\_\_;
- for or arising from usual and ordinary correspondence, including promotional **matter** relating to franchise services, operations and products, between any **insured** and past, present or prospective franchisees. However, this endorsement shall not be interpreted to exclude coverage for **advertising** disseminated from an **insured** to its franchisees for dissemination to the public;
- for or arising out of deceptive trade practices or fraud, which shall have been determined by judge, jury or legal admission;
- for or arising from the **insured's** actual or alleged failure to obtain licenses, releases or consents from person(s) appearing in **advertising** developed or produced by an **insured**. This exclusion shall not apply if the **insured** can provide tangible evidence of the license, release or consent and prove compliance therewith;
- for or arising from music contained in the following **matter**: 3rd party matter distributed by the Insured during the policy term ;
- for or arising out of or in any way related to the use of expiration dates on **advertising matter** where it is against state or local law;
- one-on-one written or verbal communications except this exclusion shall not apply to communications directly related to **advertising** or **advertising professional services**;

# SPECIMEN

- for or arising out of **scheduled matter** distributed by the **insured**, which has been produced, wholly or in part, by the **insured** or any person or entity affiliated with an **insured** through common ownership;
- for or arising out of the actual or alleged failure by the **insured** or any third party to obtain licenses, releases or consents for **matter**; but this exclusion shall not apply if the **insured** or third party can provide tangible evidence of the license, release or consent and prove compliance therewith;
- for or arising out of the **insured's** actual or alleged failure to obtain licenses, releases or consents for **matter**; but this exclusion shall not apply if the **insured** can provide tangible evidence of the license, release or consent and prove compliance therewith;
- for or arising from the following **title(s) of advertising, scheduled media or scheduled publications** until a satisfactory "Title Search and Report" has been provided to and approved by the **Company**:  
\_\_\_\_\_.
- for or arising from actual or alleged infringement or dilution of trademark, **title**, slogan, trade name, trade dress, service mark, service name or for unfair competition arising there from;
- for or arising from actual or alleged infringement or dilution of trademark, **title**, slogan, trade name, trade dress, service mark, service name or for unfair competition arising from an **insured's** name or logo;
- for or arising out of the costs or expenses related to obtaining an English translation of **matter** that is the subject of a **claim** to the **Company**;
- for or arising from **matter** that has not been created, edited, reviewed or approved by the **insured** for electronic dissemination via chat rooms, bulletin boards, web logs, interactive e-mail, or other on-line dissemination;
- for or arising out of, or in any way relating to, pari-mutuel wagering;

All other terms, conditions and exclusions remain unchanged.

## COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

|                            |                           |  |
|----------------------------|---------------------------|--|
| Named<br>Insured           |                           | Policy<br>Number   |
| Endorsement<br>Number      | Policy Expiration<br>Date | Effective Date<br>of Endorsement                               |
| Additional<br>or<br>Return |                           | Short Rate<br>\$ _____ x _____ = _____ AP<br>Pro Rate _____ RP |
| Typing Date _____          |                           |  |

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

## PROFESSIONAL SERVICES AMENDATORY ENDORSEMENT

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies insurance provided under the following:

NEWSPAPER ADVANTAGE POLICY®  
MEDIA ADVANTAGE POLICY®  
ADVERTISING AGENCY LIABILITY POLICY  
ADVERTISER ADVANTAGE POLICY®  
COMMUNICATOR'S ADVANTAGE POLICY™

SECTION I — COVERAGE AGREEMENTS, is amended to add the following:

### Professional Services Liability

The **Company** shall pay on behalf of the **insured** all **loss** in excess of the Retention, which the **insured** is legally required to pay to third parties because of liability imposed by law, as a result of **claims** arising from an **occurrence** committed by the **insured** during the **policy term** and arising from an actual or alleged negligent act, error or omission of the **insured** in the rendering of **scheduled professional services**. The Limit of Liability applicable to this endorsement is:

- the Limit of Liability specified in Item 5. of the Declarations page of the policy; or  
 a Sub-Limit of \$ \_\_\_\_\_ each **occurrence**/\$/\_\_\_\_\_ annual aggregate.  
(The Limit is part of, and not in addition to, the Limit of Liability specified in Item 5. of the Declarations page of the policy)

For purposes of this endorsement and for **claims** arising hereunder, SECTION II — DEFINITIONS, has been amended as follows:

**Loss** is deleted in its entirety and replaced with the following:

**Loss** means judgment, settlement and all forms of monetary damages as a result of a **claim** covered by this policy, including actual damages, statutory damages, punitive 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. disputed royalties, fees, deposits, commissions, charges for goods or services;
3. loss of profits;
4. multiplied damages, except where provided for under the Lanham Act, Unfair Competition Act, or other statute or common law relating to copyright or trademark infringement; or
5. the cost of correcting, performing or re-performing **scheduled professional services**.

# SPECIMEN

**Occurrence** is deleted in its entirety and replaced with the following:

**Occurrence** means the rendering of **scheduled professional services** for others.

**Occurrences** that take place on one or more dates during the **policy term**, or during two or more consecutive policies issued by the **Company**, involving the same or related subject, event, situation, person or class of persons, irrespective of the number of repetitions, versions or forms of said **occurrence**, shall be considered a single **occurrence**. The applicable Limit and Retention in effect when the first **occurrence** took place shall apply.

For purposes of this endorsement, SECTION II — DEFINITIONS is amended to add the following:

**Pollutants** means any substance located anywhere in the world portraying hazardous characteristics as defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or Canadian Environmental Protection Act or any relevant Federal, State, Provincial, County, Municipality or foreign counterpart thereof. **Pollutants** shall also mean, without limitation, solids, liquids, gaseous or thermal or electromagnetic irritants, or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, formaldehyde, bacterial contaminates, and waste (including materials to be recycled, reconditioned or reclaimed) as well as any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

**Scheduled professional services** means: Distribution of third party scheduled media to others for a fee

For purposes of this endorsement, SECTION III — EXCLUSIONS is amended to add the following and shall take precedence where in conflict for **claims** arising hereunder:

- AA.** for or arising out of any actual or alleged dishonest, fraudulent, deceptive, illegal, criminal or malicious act committed by an **insured**, which shall have been determined by judge, jury or legal admission. In the event the **insured** is found to have committed a fraudulent, illegal, criminal or malicious act the **Company** will have the right to be reimbursed;
- BB.** for or arising out of any actual or alleged intentional act of an **insured** expected or intended to cause damage or injury, including but not limited to assault or battery, the intentional and arbitrary withdrawal of **scheduled professional services** from the market or the intentional discontinuing of support for a **scheduled professional service**, even if the extent of the damage is different than what was intended or expected;
- CC.** arising out of the rendering of services or the providing of products for the planning, construction, maintenance, operation or use of any nuclear facility, air traffic control, direct life support or weapons systems;
- DD.** against an **insured** that is brought by or on behalf of another **insured** or any business entity that is owned, managed or operated, directly or indirectly, by an insured, or any parent company, **subsidiary**, successor or assignee of an **insured**, or anyone affiliated with an **insured** or such business through common and controlling interest; however, this exclusion shall not apply if such business entity is an **insured's** customer, is bringing the **claim** in that capacity and is acting totally without the solicitation, assistance, participation or intervention of any **insured**;
- EE.** for or arising out of the liability of third parties, which have been assumed by the **insured** under any contract or agreement; unless the **insured** would have been liable for such liability in the absence of such contract or agreement;
- FF.** for or arising from the actual, alleged or threatened discharge, release, escape, seepage, dispersal or disposal of, or exposure to **pollutants** or arising from any request, direction or order that an **insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants** or any voluntary decision to do so;
- GG.** for or arising out of the development of software, electronic code or any computer program, application, operating system or network by or on behalf of the **insured**;

- HH.** for or arising out of any ordinary wear and tear, gradual deterioration of or failure to maintain the **insured's**:
1. computer programs including, but not limited to, applications, communications, networking, operating systems and related computer programs;
  2. computer hardware including, but not limited to, central processing units, memory storage devices, input/output devices and other peripheral devices and components; or
  3. information in electronic form including, but not limited to, account information, proprietary business information and any other electronic information necessary to the conduct of the **insured's** business;
- II.** for or arising out of the **insured's** performance of **scheduled professional services** or failure to provide same prior to the effective date of the **policy term**;
- JJ.** for or arising out of any telecommunications failure including:
1. the failure, malfunction or inadequacy of any satellite;
  2. the failure of any power or other utility service; or
  3. the failure of telephone lines, data transmission lines, wireless communications connection or other telecommunications equipment, facilities or electronic infrastructure, including equipment, facilities or infrastructure that supports the operation of computer networks which are used to transmit or receive voice or data communications and which are not under the **insured's** direct operational control;
- KK.** for or arising out of actual or alleged harassment or discrimination because of race, association, age, sex, sexual orientation, national origin, citizenship, ethnicity, ancestry, religion, physical or mental disability or marital or economic status;
- LL.** for or arising out of any actual or alleged false arrest, detention, or imprisonment, wrongful entry or eviction, trespass or eavesdropping.

All other terms, conditions and exclusions remain unchanged.

**COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:**

|   |                        |  |
|---|------------------------|--|
| Named Insured                                       |                        | Policy Number                            |
| Endorsement Number                                  | Policy Expiration Date | Effective Date of Endorsement            |
| Additional<br>or Premium \$ _____ x _____<br>Return |                        | Short Rate _____ AP<br>Pro Rate _____ RP |
| Typing Date   |                        | <b>SPECIMEN</b>                          |

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

# SPECIMEN

## SELECTION OF COUNSEL ENDORSEMENT

PLEASE READ THE ENTIRE POLICY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES

This endorsement modifies insurance provided under the following:

NEWSPAPER ADVANTAGE POLICY®  
MEDIA ADVANTAGE POLICY®  
COMMUNICATOR'S ADVANTAGE POLICY™  
ADVERTISING AGENCY LIABILITY POLICY  
ADVERTISER ADVANTAGE POLICY®

This endorsement modifies any other endorsement that may be in conflict in respect to the selection of counsel.

SECTION V — GENERAL CONDITIONS, **Conduct of Defense and Cooperation of the Insured** is deleted in its entirety and replaced with the following:

The **Company** shall retain counsel to represent the **insured** for the defense of the **claim** and shall pay all **defense costs** incurred in the defense of the **claim** in excess of the Retention. The **insured** may consult with the **Company** regarding the selection of defense counsel in respect to any covered **claim** or for which a defense is provided and shall cooperate in the defense as follows:

1. the **insured** shall provide any documents, information, correspondence or pleadings reasonably requested by the **Company**;
2. the **insured** shall attend hearings, settlement conferences and trials, assist in securing and complying with discovery requests and procuring the attendance of witnesses; and
3. no **insured** shall make any admissions of liability, but this shall not apply to the correction or retraction of matter.

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**.

All other terms, conditions and exclusions remain unchanged.

**COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:**

|                            |                          |  |
|----------------------------|--------------------------|--|
| Named Insured              |                          | Policy Number                              |
| Endorsement Number         | Policy Expiration Date   | Effective Date of Endorsement              |
| Additional<br>or<br>Return | Premium \$ _____ x _____ | Short Rate<br>= _____ AP<br>Pro Rate<br>RP |
| Typing Date                |                          |  |

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

# SPECIMEN

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CALIFORNIA CANCELLATION & NON-RENEWAL PROVISIONS

- A. The provisions of this policy pertaining to cancellation by **us** are amended as follows:

### CANCELLATION

1. If this policy has been in effect for more than 60 days, or is a renewal of a policy **we** issued, **we** may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
  - a. Nonpayment of premium, including payment due on a prior policy **we** issued and due during the current policy term covering the same risks.
  - b. Discovery of fraud or material misrepresentation by:
    - (1) Any **insured** or his or her representative in obtaining this insurance; or
    - (2) **You** or **your** representative in pursuing a claim under this policy.
  - c. A judgment by a court or an administrative tribunal that **you** have violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.
  - d. Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by **you** or **your** representative, which materially increase any of the risks insured against.
  - e. Failure by **you** or **your** representative to implement reasonable loss control requirements, agreed to by **you** as a condition of policy issuance, or which were conditions precedent to **our** use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
  - f. A determination by the Commissioner of Insurance that the:
    - (1) Loss of, or changes in, **our** reinsurance covering all or part of the risk would threaten **our** financial integrity or solvency; or
    - (2) Continuation of the policy coverage would:
      - (a) Place **us** in violation of California law or the laws of the state where **we** are domiciled; or
      - (b) Threaten **our** solvency.
  - g. A change by **you** or **your** representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
2. We will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to **you**, and to the producer of record, at least:
  - a. 10 days before the effective date of cancellation if **we** cancel for a reason listed in paragraph A.1.a. or b.
  - b. 30 days before the effective date of cancellation if **we** cancel for any other reason listed in paragraph A.1.

- B. The following is added:

# SPECIMEN

## NON-RENEWAL

1. If **we** decide not to renew this policy, **we** will mail or deliver written notice stating the reason for non-renewal to **you** and to the producer of record, at least:
  - a. 60 days, but not more than 120 days, before the expiration or anniversary date, if this is a professional liability policy or errors and omissions policy; or
  - b. 60 days before the expiration or anniversary date, if this is a professional liability policy for a health care provider.
2. **We** will mail or deliver notice to the producer of record and to **you**, at the mailing address shown in the policy.
3. **We** are not required to send notice of non-renewal in the following situations:
  - a. If the transfer or renewal of a policy, without any changes in terms, conditions, or rates, is between **us** and a member of **our** insurance group.
  - b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with paragraph B.1.
  - c. If **you** have obtained replacement coverage, or if **you** have agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
  - d. If the policy is for a period of no more than 60 days and **you** are notified at the time of issuance that it will not be renewed.
  - e. If **you** request a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
  - f. If **we** have made a written offer to **you**, in accordance with the timeframes shown in paragraph B.1., to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.

| ENDORSEMENT # | POLICY # | INSURED NAME |
|---------------|----------|--------------|
|               |          |              |



## **MEDIA ADVANTAGE POLICY®**

(Defense Costs Within the Limit of Liability)

**DEFENSE COSTS** SHALL BE APPLIED AGAINST THE RETENTION AND THE LIMIT OF LIABILITY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ 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 the policy Declarations and the terms, exclusions and conditions herein, the Company and the insured agree to the following:

### **SECTION I — COVERAGE AGREEMENTS**

#### **A. Communications and Personal Injury Liability**

The Company shall pay on behalf of the **insured** all **loss** in excess of the Retention and within the Limit 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 **claims** arising from an **occurrence** committed by the **insured** during the policy term in or for **scheduled media** and arising from, but not limited to:

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. negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
4. trespass or wrongful entry or eviction;
5. false arrest or imprisonment, abuse of process, detention or malicious prosecution;
6. harassment or stalking;
7. violations of the Fourth Amendment to the U.S. Constitution or other equivalent state statute preventing unreasonable searches and seizures relating to newsgathering;
8. breach of confidentiality of any oral, written or implied agreement, however styled in a **claim**, arising from the failure to maintain the confidentiality of a source or the materials furnished by a source, or from the failure to portray a source or subject in a certain manner or light;
9. infringement of copyright, plagiarism, **piracy** and misappropriation of ideas under implied contract or other misappropriation of ideas or information;
10. infringement or dilution of trademark, **title**, slogan, trade name, trade dress, service mark or service name;

11. unfair competition, but only when alleged in a **claim** covered under one or more of subparts 1 – 10 above;
12. deceptive trade practices or fraud, whether statutory, regulatory or at common law, but only when alleged in a **claim** covered under one or more of subparts 1 – 11 above and when the acts giving rise to such causes of action had been previously approved by the **insured's** counsel or duly authorized supervisor;
13. conspiracy, but only when alleged in a **claim** covered under one or more subparts 1 – 11 above;
14. breach of an indemnification or hold harmless agreement, but only when alleged in a **claim** covered under one or more of subparts 1 – 11 above;
15. negligent supervision of an employee, but only when alleged in a **claim** covered under one or more of subparts 1-11 above;
16. any contempt order, but only if the **insured's** counsel had previously authorized such act or omission based upon a good faith belief that the court order violated the First Amendment to the United States Constitution or any provision of a State Constitution protecting freedom of speech and press or that the act or omission was not a violation of such court order; or
17. any legal or equitable proceeding relating to spoliation of evidence arising from the innocent destruction and/or recycling of the **insured's matter**.

#### **B. Contextual Errors and Omissions Liability**

The **Company** shall pay on behalf of the **insured** all **loss** in excess of the Retention and within the Limit 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 **claims** arising from an **occurrence** committed by the **insured** during the **policy term** and arising from any form of negligence in the content of **matter** uttered or disseminated in **scheduled media**, including but not limited to an error, omission, misrepresentation, misstatement or misleading statement.

#### **C. Defense of Claims**

The **Company** shall pay on behalf of the **insured** all **defense costs**, subject to SECTION IV — LIMIT 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 **scheduled media** and who has been added to the policy by endorsement as an **insured**; or
2. an individual or entity added to the policy by endorsement as an **insured** in respect to **scheduled media** furnished by the **Named Insured** to the **additional insured**.

#### **B. Advertising** means **advertising**, publicity, press releases or promotional materials or public appearances on behalf of the **insured** or for others, but this definition does not include one-on-one written or oral communications, or the redemption of lotteries, sweepstakes, coupons, contests or games of chance, including the over or under redemption of any of the above.

#### **C. Assumed under contract** means liability assumed by the **insured** in any written, oral or implied hold harmless or indemnity agreement with any party, but only with respect to **matter** provided by the **insured** and for the types of **occurrences** covered by this policy.

#### **D. Bodily injury** means bodily injury, sickness, disease, including death.

**E. Claim** means:

1. any legal or judicial proceeding against an **insured** seeking to hold an **insured** responsible 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 seeking to hold an **insured** responsible 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** does not include an investigation or proceeding initiated by an administrative or regulatory agency, including but not limited to the Federal Trade Commission or Federal Communications Commission.

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

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

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

**Defense costs** do not include salaries, expenses or overhead of any **insured**.

**H. Independent Contractor** means an individual or business entity providing **matter** or services to the **insured** pursuant to an express or implied contract or agreement.

**I. 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 duties as such;
2. the estate, heirs, legal representatives or assigns of an **insured** in the event of the death, incapacity or bankruptcy of an **insured**, but only if such **claim** would be subject to coverage under the policy if made against the **insured**;
3. the **insured's** lawful spouse, but only if the **claim** arises solely from the spouse's status as such or from the spouse's ownership interest in the **matter** giving rise to the **claim**, but only if such **claim** would be subject to coverage under the policy if made against the **insured**; or
4. at the sole discretion of the **Named Insured**, any agent, leased or temporary employee, volunteer or **independent contractor** providing **matter** or services for **scheduled media**, including but not limited to freelancers, correspondents, photographers and stringers, but only in respect to acts committed on behalf of the **Named Insured** or **subsidiary**.

**J. Loss** means judgment, settlement and all forms of monetary damages as a result of a **claim** covered by this policy, including actual damages, statutory damages, punitive, 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), or
2. the cost of recall, correction, reproduction, redistribution or reprinting of **matter** and related expenses incurred by the **insured**, any **additional insured** or any indemnitee;

With regard to punitive damages, this insurance shall apply to the fullest extent permitted by law. Where an **insured** determines, based on written opinion of counsel, that punitive damages are insurable under any applicable law, the **Company** shall not challenge the **insured's** determination of insurability.

- K. Matter** means any communication, regardless of its nature or form, including but not limited to **advertising**, art, creative expression, data, entertainment, film, facts, fiction, graphics, information, literary composition, music, news, photographs, pictures, opinions, sound recordings and video, and the use of such **matter** by others with the permission of the **insured**.
- L. Named Insured** means the person or organization named in Item 1 in the Declarations of the policy.
- M. Occurrence** means:
1. the gathering, creation, acquisition, investigation and compilation of **matter**;
  2. any broadcast, transmission, utterance, telecast, cablecast, serialization or production of **matter**;
  3. any publication or republication of **matter** or incidental publications relating thereto;
  4. any online dissemination of **matter**;
  5. **advertising** in or directly relating to **scheduled media**;
  6. the release, distribution, syndication, licensing, sale, lease or exhibition of **matter**; or
  7. an editorial decision to deny or limit access to **scheduled media** to prevent the utterance or dissemination of offensive **matter**.
- Occurrences** that take place on one or more dates during the **policy term**, or during two or more consecutive policies issued by the **Company**, involving the same or related subject, event, situation, person or class of persons, irrespective of the number of repetitions, versions or forms of said **occurrence**, shall be considered a single **occurrence**. The Limits of Liability and Retention in effect when the first **occurrence** took place shall apply.
- N. Piracy** means the wrongful use, reprinting or reproduction of copyrighted intellectual property.
- O. Policy term** means the period beginning with the inception date shown in the Declarations and ending with the earlier of:
1. the date of cancellation of the policy; or
  2. the expiration date shown in the Declarations.
- P. 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.
- Q. Scheduled media** means the media entities and activities set forth in Item 2 of the Declarations or by endorsement, including any electronic, incidental, supplemental or special editions relating thereto, on the effective date of coverage or established or acquired subsequently thereto, but only if the **Named Insured** gives the **Company** written notice of the new station, publication, program, entity or system within ninety (90) days of its creation or acquisition and pays any additional premium that may be required.
- R. Subsidiary** means any entity in which the **insured** owns, directly or through one or more **subsidiaries**, more than fifty percent (50%) of the issued or outstanding voting securities.
- S. Title** means the caption or name of **matter**.

### SECTION III — EXCLUSIONS

The Company shall not be obligated to defend or to pay **loss or defense costs** arising from **claims**:

- A. for or arising out of, actual or alleged breach of any express or implied contract, agreement or warranty or any fee, billing or charge 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** nor for **claims** covered under SECTION I — COVERAGE AGREEMENTS, A.8;
- B. for or arising out of ownership disputes relating to **matter** or services supplied to the **insured** by any past, present or future **insured**, joint venturer or **independent contractor**;
- C. for or arising out of 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 that do not directly arise from the content of **matter** gathered, uttered or disseminated in or for **scheduled media**;
- D. for or arising out of actual or alleged infringement of patent or inducement to infringe a patent;
- E. for or arising out of actual or alleged false, fraudulent, deceptive or misleading **advertising** or for unfair competition arising there from, but only in regard to intentionally false, fraudulent, deceptive or misleading **advertising** with respect to the **insured's** own products or services;
- F. for or arising out of an **insured's** actual or alleged failure to provide or render **advertising** services, including but not limited to the development, distribution, display or placement of **advertising**, but this exclusion shall not apply to **claims** directly attributable to the content of **advertising**;
- G. for or arising from actual or alleged **bodily injury** or **property damage**; but this exclusion shall not apply to **bodily injury** arising exclusively from emotional distress;
- H. for or arising out of actual or alleged violation of a 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;
- I. for or arising out of actual or alleged violation of a 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;
- J. for violation of a criminal statute, which shall have been determined by judge, jury or legal admission; except this exclusion shall not apply if the **insured's** counsel had previously authorized such act or omission based upon a good faith belief that the criminal statute violated the First Amendment to the United States Constitution or any provision of a State Constitution protecting freedom of speech and press or a good faith belief that the act or omission was not a violation of such criminal statute;
  - 1. With respect to Exclusion J, no knowledge possessed by or conduct of any **insured** shall be imputed to any other **insured** for coverage purposes under the policy, and only knowledge possessed by or conduct of any officer, director, partner, general counsel or risk manager shall be imputed to the **insured**;
- K. for or arising out of the 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. made by ASCAP, SESAC, BMI, RIAA or other music licensing entity on their behalf or for others arising from the **insured's** failure to procure or maintain requisite licenses or payment of royalties;
- M. for or arising out of an **occurrence** which has been the subject of any notice to an **insured** of a **claim** or a potential **claim** prior to the inception date of the policy;
- N. for or arising out of the transmission or dissemination of unsolicited commercial electronic mail or facsimiles.

## SECTION IV — LIMITS OF LIABILITY AND RETENTION

### A. Limits of Liability

**Defense costs** are part of and not in addition to the Limit of Liability. The Limit of Liability set forth in Item 5(a) of the Declarations shall be the most the **Company** shall pay for **loss** and **defense costs** resulting from any **occurrence**. The Limit of Liability set forth in Item 5(b) of the Declarations shall be the most the **Company** shall pay for all **loss** and **defense costs** payable under this policy. The Limits of Liability apply regardless of the number of:

1. **insureds** covered under the policy;
2. **occurrences**;
3. Coverage Agreements;
4. policies issued by the **Company**;
5. persons or organizations who sustain or claim **loss**; or
6. **claims** made or suits filed.

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 pay **defense costs**, shall be completely fulfilled, and the **Company** shall have no further obligations under this policy.

### B. Retention

The Retention identified in Item 4 of the Declarations shall be any combination of **loss** or **defense costs** first incurred and payable by or on behalf of the **insured** for each **claim**. The **Company's** Limit of Liability is in excess of the Retention set forth in the Declarations. The Retention shall not reduce the Limit of Liability and shall apply separately to each **occurrence**.

## SECTION V — GENERAL CONDITIONS

### A. Notice of Claim

The **insured** shall provide prompt notification of any potentially covered **claim** by whatever means is most expedient and shall forward all suit papers and other documents to:

First Media  
A Division of OneBeacon Professional Partners  
Attention: Claims Administrator  
1-800-753-7545  
913-384-4822 — Fax

### B. Conduct of Defense and Cooperation of the Insured

The **insured** shall retain counsel approved by the **Company**, whose approval shall not be unreasonably withheld, for the defense of the **claim**. The **insured** shall cooperate with the **Company** with respect to any covered **claim** or for which a defense is being provided as follows:

1. the **insured** shall file responsive pleadings within the time required by law and keep the **Company** advised of all developments and expenses and provide the **Company** with any documents, information, correspondence or pleadings reasonably requested by the **Company**;
2. the **insured** shall attend hearings and trials, assist in securing and complying with discovery requests and procuring the attendance of witnesses;
3. the **insured** and defense counsel shall comply with reasonable **claim** procedures established by the **Company**;

4. the **Company**, at its own expense, shall have the right to associate with the **insured** in the defense;
5. 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**; and
6. no **insured** shall make any admissions of liability, but this shall not preclude the **insured** from retracting or correcting **matter**.

#### C. Retraction or Correction

The **insured** shall have sole discretion regarding the necessity to retract or correct **matter** that has been uttered or disseminated in **scheduled media**.

#### D. Sources, Notes and Confidentiality

The duty to cooperate does not require the **insured** to disclose the identity of a confidential source or materials furnished by a source or to produce a reporter's notes, recordings, tapes, out-takes or related materials in connection with a **claim**.

#### E. Settlement, Judgment and Appeal

The **insured** may settle any **claim** if the total cost of **loss** and **defense costs** is less than the remaining Retention without prior consent from the **Company**. 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 settlement, 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 from the 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; or
2. if the **Company** is willing to accept a settlement offer or judgment of a trial or appellate court and the **insured** is not willing to accept such settlement offer or judgment, and if the judgment or settlement exceeds the **insured's** remaining Retention, the **Company** and the **insured** shall negotiate, mediate or submit to other means of dispute resolution as soon as practicable, with each party to bear its own expenses in connection therewith.

#### F. Time of Inception, Policy Term

This policy will begin on the effective date shown in the Declarations. The policy shall continue in force until the expiration date also shown in the Declarations, unless earlier terminated.

#### G. Territory

The 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 **insured** and the **Company**.

#### I. Premium

The **Named Insured** shall pay to the **Company** the premium stated in Item 6 of the Declarations. The premium may be subject to change during the **policy term** based upon additions or deletions of **scheduled media** or changes in the provisions of the policy by endorsement as agreed upon by the **Named Insured** and the **Company**.

#### **J. Mergers, Consolidations and Acquisitions**

This policy applies only to **scheduled media**, the **insured** and any **additional insured** described on the effective date of the policy in the Declarations or by endorsement. The policy shall extend to any newly created or acquired media entities or mergers, where the **Named Insured** is the surviving entity, if reported to the **Company** within ninety (90) days. Newly acquired or created media entities and mergers described above will be subject to underwriting approval, and payment of any additional premium that may be required.

#### **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**, if any, that exceeds the sum of:

1. the total amount that all other insurance would pay for **loss** in the absence of this policy; and
2. the total of all Retentions and self-insured amounts under all 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 under the self-insured retention obligation 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 the 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. Any person or organization, who has secured such final judgment or is a party to such written settlement agreement, shall be entitled to recover to the full extent of the insurance afforded by this policy.
3. 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 the policy.

#### **P. Cancellation and Non-renewal**

1. The **Named Insured** may cancel the policy at any time by mailing to First Media written notice stating when there after such cancellation shall be effective or by surrendering the policy to First Media. Any unearned premium will be calculated in accordance with the customary short rate table and procedure.

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, but 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 when, but not less than ten (10) days thereafter, such cancellation shall be effective.
3. If the **Company** non-renews this policy, the **Named Insured** shall be mailed a 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 the policy.

#### **R. Changes to the 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 endorsement issued to form a part of this policy and signed by the **Company's** agent.

#### **S. State Endorsements**

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

#### **T. Application Representations and Severability**

The **Named Insured** represents 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, and that such representations are material to the **Company's** acceptance of this risk. No knowledge possessed by any **insured** shall be imputed to any other **insured** for risk acceptance purposes and only knowledge possessed by any officer, director, partner, counsel, risk manager or other person whose signature appears on the application shall be imputed to the **Named Insured**.