

Media Liability Coverage Part

I. What is covered

We will pay up to the **coverage part limit** for **damages** and **claim expenses** in excess of the **retention** for covered **claims** against **you** for any actual or alleged:

1. copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, or any misappropriation of content, formats, characters, trade names, character names, titles, voices, slogans, graphic material, or artwork;
2. invasion of privacy, intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
3. defamation, libel, slander, trade libel, product disparagement, or injurious falsehood;
4. unintentional infliction of emotional distress or outrage based on harm to the character or reputation of any person; or
5. negligence in connection with **your media activities** or **your advertising of your professional services**,

provided the **claim**:

- a. results from **your media activities** or **your advertising of your professional services** performed on or after the **retroactive date**;
- b. is first made against **you** during the **policy period**; and
- c. is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

Supplemental payments

We will also make the following payments:

- A. We will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by **you** if **we** require **you** to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered **claim**, but **we** will not pay more than an aggregate of \$10,000 per **claim** for such expenses, regardless of the number of **insureds**.

No **retention** will apply to amounts **we** pay under this subsection A, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, **you**, **your**, or **insured** means a **named insured**, **subsidiary**, **employee**, or **acquired entity**, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future:

1. person employed by the **named insured** or **subsidiary** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or
2. partner, director, officer, or board member (or equivalent position) of the **named insured** or **subsidiary**,

but only while in the course of their performance of **media activities** or **advertising of professional services** on behalf of or at the direction of such **named insured** or **subsidiary**.

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

1. acquires substantially all of the assets;

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2. acquires the majority of its voting securities, as a result of which it becomes a **subsidiary**; or
3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 10% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

1. the **named insured** provides **us** with written notice of such creation or acquisition;
2. the **named insured** provides **us** with information related to such creation or acquisition as **we** may reasonably require;
3. the **named insured** accepts any special terms, conditions, exclusions, or additional premium charge as **we** may reasonably require; and
4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your media activities** or **your advertising of your professional services** performed after the acquisition, merger, or creation.

IV. Defense and settlement of claims

Defense

We have the right and duty to defend any covered **claim**, even if such **claim** is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend **you** against a covered **claim**. **You** may request in writing that **we** appoint defense counsel of **your** own choice, but whether to grant or deny such a request will be at **our** sole discretion.

Settlement

We have the right to solicit and negotiate settlement of any **claim** but will not enter into a settlement without **your** consent, which **you** agree not to withhold unreasonably. If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

1. the amount of **our** recommended settlement;
2. **claim expenses** incurred up to the date of **our** recommendation;
3. 50% of all **claim expenses** incurred after **our** recommendation; and
4. 50% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims

You must give written notice to **us** of any **claim** as soon as possible, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying **us** of **potential claims** that may lead to a covered **claim** against **you**.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely

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demand for relief, and any additional information about the **potential claim we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention

Our obligation to pay **damages** and **claim expenses** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim**.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any **damages** or **claim expenses**, for any **claim**:

Antitrust/deceptive trade practices

1. based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;
 - c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - d. deceptive or misleading advertising.

Bodily injury

2. based upon or arising out of any actual or alleged **bodily injury**; however, this exclusion will not apply to a **claim** for emotional distress or outrage covered under part 4 of Section I. What is covered.

Breach of contract

3. based upon or arising out of any actual or alleged breach of any contract or agreement, or any liability of others that **you** assume under any contract or agreement; however, this exclusion will not apply to any liability **you** would have in the absence of the contract or agreement.

Breach of warranty/
guarantee

4. based upon or arising out of any actual or alleged breach of express warranties or guarantees; however, this exclusion will not apply to any liability **you** would have in the absence of the warranties or guarantees.

Client content

5. based upon or arising out of any content provided to **you** by **your client**; however, **we** will pay **claim expenses** for any **claims** against **you** based upon or arising out of such content.

Collection of data without
knowledge

6. based upon or arising out of any actual or alleged:
 - a. collection of personally identifiable information by **you** (or others on **your** behalf) without the knowledge or permission of the person to whom the personally identifiable information relates; or
 - b. use of personally identifiable information by **you** (or others on **your** behalf) in violation of applicable law.

Commercial Dispute

7. based upon or arising out of any actual or alleged commercial dispute with **your** business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a **claim** is based upon:
 - a. a commission or royalty, or any other term upon which such partner or associate is

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- to be compensated in connection with doing business with **you**, or any compensation or remuneration promised or owed by **you** pursuant to those terms; or
- b. **your** decision to cease doing business with such a partner or associate.
- Cramming/slamming 8. based upon or arising out of:
- a. the imposition of charges for services or content in relation to telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar telecommunications services, which charges have not been adequately disclosed or which services or content have not been requested by the consumer; or
- b. the unauthorized switching of telecommunications carriers, including providers of telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar services.
- Criminal proceedings 9. brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.
- Employment related liability 10. based upon or arising out of any actual or alleged:
- a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law;
- b. liability or breach of any duty or obligation owed by **you** as an employer or prospective employer; or
- c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.
- Excluded costs and damages 11. to the extent it seeks or includes:
- a. fines, penalties, taxes, or sanctions against **you**;
- b. overhead costs, general business expenses, salaries, or wages incurred by **you**;
- c. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;
- d. liquidated or multiple damages;
- e. restitution, disgorgement of profits, any advantage to which **you** were not legally entitled, or unjust enrichment; or
- f. the cost of complying with injunctive relief.
- Excluded statutory violations 12. based upon or arising out of any actual or alleged violation of the following laws:
- a. the Securities Act of 1933;
- b. the Securities Exchange Act of 1934;
- c. any state blue sky or securities laws;
- d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*; or
- e. the Employee Retirement Income Security Act of 1974,
- all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.
- Failure to maintain insurance or bonds 13. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

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False or misleading advertising	14. based upon or arising out of any actual or alleged false or misleading advertisement, including any inaccurate, inadequate, or incomplete description of your goods, products, or services; however this exclusion will not apply to any claim for trademark infringement or false designation of origin based on your alleged unauthorized use of another's trademark.
Government investigation/enforcement	15. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization.
Insured vs. insured	16. brought by or on behalf of one insured or affiliate against another insured or affiliate .
Intentional acts	17. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that we will pay claim expenses until there is a final adjudication establishing such conduct. This exclusion will apply to the named insured only if the conduct was committed or allegedly committed by any: <ul style="list-style-type: none"> a. partner, director, officer, or member of the board (or equivalent position) of the named insured; or b. employee of the named insured if any partner, director, officer, member of the board (or equivalent position) of the named insured knew or had reason to know of such conduct by the employee. This exclusion will apply separately to each insured and will not apply to any insured who did not commit, participate in, acquiesce to, or ratify such conduct committed by another insured .
License/royalties	18. based upon or arising out of any actual or alleged obligation to pay any licensing fee or royalty.
Manufacture or design of goods/products	19. based upon or arising out of any goods or products designed, manufactured, sold, handled, or distributed by you .
Misappropriation of funds	20. based upon or arising out of the actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.
Network security	21. based upon or arising out of any actual or alleged failure of computer security, including but not limited to the: <ul style="list-style-type: none"> a. transmission of malicious software such as a computer virus, worm, logic bomb, or Trojan horse; b. failure to prevent a denial of service attack; c. failure to prevent authorized access to any computer system, personally identifiable information, or confidential corporate information held or transmitted in any form; or d. failure to prevent damage to any third party digital asset.
Ownership of content	22. based upon or arising out of any actual or alleged disputes with any of your present or former directors, officers, trustees, partners, joint venturers, employees, agents, or independent contractors concerning ownership of or the exercise of rights relating to content, material, or services supplied to you by any of them.
Patent/trade secret	23. based upon or arising out of any actual or alleged infringement, use, disclosure, or misappropriation of any patent or trade secret.
Pollution/environmental	24. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants , including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants .

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- Prior acts/notice/knowledge 25. based upon or arising out of any:
- a. **claim** or **potential claim** that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;
 - b. **claim** or **potential claim** that was the subject of, or is related to, any prior or pending litigation, **claim**, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against **you** and of which **you** had notice prior to the **policy period**; or
 - c. other matter **you** had knowledge of prior to the **policy period**, and **you** had a reasonable basis to believe could result in a **claim**.
- However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.
- Privacy 26. based upon or arising out of any actual or alleged:
- a. unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in **your** care, custody, or control; or
 - b. violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.
- Privacy policy violations 27. based upon or arising out of any actual or alleged:
- a. failure to have or appropriately display a privacy policy;
 - b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws;
 - c. breach of **your** privacy policy; or
 - d. changing of the terms of **your** privacy policy.
- Professional services 28. based upon or arising out of **your** actual or alleged performance of or failure to perform **professional services** or any other services customarily provided by an architect, engineer, surveyor, physician, surgeon, dentist, or other healthcare provider, accountant, insurance agent/broker, investment advisor, securities broker/dealer, or attorney.
- Property damage 29. based upon or arising out of any actual or alleged **property damage**.
- Repair/replace/recall 30. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by **you** or others.
- Scareware 31. based upon or arising out of any actual or alleged provision or transmission of Scareware, including but not limited to software that produces false or alarming warning messages.
- Sexual misconduct 32. based upon or arising out of any actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature, including the negligent employment, investigation, supervision, training, or retention of a person who commits such conduct, or the failure to report such conduct to the proper authorities.
- Software copyright 33. based upon or arising out of any actual or alleged copyright infringement related to software or source code.
- Subsidiary outside control of named insured 34. a. based upon or arising out of **media activities** or **advertising of professional services** performed by or on behalf of a past or present **subsidiary** while the **named insured** does not have majority ownership or management control of it; or
- b. made against a **subsidiary** or anyone acting on its behalf while the **named insured** does not have majority ownership or management control of it.

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Sweepstakes/gambling/lotteries	35. based upon or arising out of any: <ol style="list-style-type: none"> a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or b. price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.
Unsolicited telemarketing	36. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.
Virtual currency	37. based upon or arising out of any actual or alleged virtual currency, including but not limited to virtual goods exchanged in connection with an Internet game or virtual economy.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Advertising

means the online, digital, or electronic promotion of **your professional services** by broadcast, transmission, dissemination, telecast, cablecast, podcast, streaming, publication, republication, or by use of a website or social media.

Affiliate

means any person or entity related to any **insured** through common ownership, control, or management as follows:

1. any person or entity:
 - a. which wholly or partly owns, operates, controls, or manages the **named insured**;
 - b. which was operated, controlled, or managed by the **named insured**; or
 - c. in which any **insured** has an ownership interest of 15% or more, at anytime during or after the performance of the **media activities** or **your advertising of your professional services** giving rise to the **claim**; or
2. any entity for which any **insured** is an officer or director at the time the **claim** is made.

Affiliate does not include a **subsidiary**.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses

means the following sums incurred in excess of the **retention** and with **our** prior consent:

1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds, or similar bond, but **we** will have no obligation to apply for or furnish any such bonds.

Damages

means the following amounts incurred in excess of the **retention**:

1. a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and awards of claimant's attorney fees); or
2. a monetary settlement negotiated by **us** with **your** consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

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Media activities	means the publication, broadcast, dissemination, or release of media content in connection with your professional services .
Media content	means the substance of any communication, including but not limited to language, data, facts, fiction, music, photographs, images, artistic expression, or visual or graphic materials.
Pollutants	means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, mold, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
Potential claim	means any acts, errors, or omissions of an insured or other circumstances reasonably likely to lead to a claim covered under this policy.
Professional services	means only those services identified as Covered Professional Services under the Media Liability Coverage Part of the Declarations.
Property damage	means physical loss of, physical damage to, or destruction or loss of use of any tangible property.
Retention	means the amount stated as such under the Media Liability Coverage Part of the Declarations.
You, your, or insured	means a named insured, subsidiary, employee, or acquired entity , as defined in Section III. Who is an insured.