

## IMPORTANT NOTICES

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### GENERAL INFORMATION

This policy sets out the terms, conditions and limits that apply for the insurance we offer to you. If we accept your application for insurance, you will receive a schedule that sets out details of the insurance you have taken out.

Our agreement with you is made up of your application, this insurance policy, the schedules and endorsements we send to you. Endorsements are notices we send to confirm any change to your insurance.

Keep this insurance policy in a safe place. You may want to refer to it from time to time.

We recommend that you keep receipts for major items you purchase.

If you need more information about this insurance policy, please contact your insurance adviser.

### INSURERS

This Policy is underwritten by:

- 65.00% - CGU Insurance Limited - ABN 27 004 478 371, AFS Licence No 238291 (lead insurer).
- 35.00% - QBE Insurance (Australia) Limited - ABN 78 003 191 035, AFS Licence No 239545.

This means each Insurer is only responsible for its percentage share.

### AGENT OF THE INSURERS

Austagencies Cinesure, a division of Austagencies Pty Ltd, ABN 76 006 090 464, AFS Licence No. 244584, in arranging or effecting this insurance, or in dealing with or settling claims will be acting under an authority given to it by the insurers. It will be acting as an agent of the insurers and not as your agent.

### YOUR DUTY OF DISCLOSURE

#### What you need to tell us

You must tell us anything you know, or should know, that could affect our decision to insure you and/or the terms on which we insure you. You must do this when you apply for a policy, renew your policy or when you change or reinstate your policy. When we ask you specific questions, you must answer these questions truthfully and in a way that a reasonable person in the circumstances would answer them. It is important that every person who will be insured by the policy answers all questions in this way. These requirements are part of the Insurance Contracts Act 1984.

#### What you do not need to tell us

You do not need to tell us anything that:

- Reduces our risk.
- Is of common knowledge.
- We know, or as an insurer should know.
- We indicate that we do not want to know.

#### What will happen if you do not tell us

If you withhold relevant information or you do not answer our questions in the way we have described, we can reduce the amount we pay you for your claim, or we can cancel your policy. If your failure to tell us is fraudulent, or your answers are untruthful, we can treat your policy as if it never existed.

### WHEN YOU ARE INSURED

Your insurance begins when we accept your application. The commencement date of your insurance will be shown on the schedule we will send you.

The insurance applies for the period for which you have paid us (or agreed to pay us) the premium. You may pay your premium by

#### **Austagencies Cinesure**

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email: [cinesure@cinesure.com.au](mailto:cinesure@cinesure.com.au) web: [www.cinesure.com.au](http://www.cinesure.com.au)

cash, cheque or direct bank deposit. If your cheque is dishonoured by your financial institution, you are not insured.

Policy. A copy of the our Privacy Policy can also be obtained from our website [www.cinesure.com.au](http://www.cinesure.com.au)

## THE LAW THAT APPLIES TO THIS POLICY

Any disputes arising from this policy will be determined by the courts, and in accordance with the laws, of the state or territory of Australia where this policy is issued.

### CLAIMS:

This policy does not provide cover in relation to events that occurred before the contract was entered into.

### AVERAGE CLAUSE – UNDER INSURANCE:

Some sections of this policy contain an “Average” or “Co-Insurance” Clause. This means that you must insure for the full value at risk.

If you are under-insured, your claim may be reduced in proportion to the amount of under-insurance.

A simple example of the application of average is as follows:

- Full value \$100,000 Sum Insured \$50,000
- Therefore you are your own insurer for 50%
- Fire damage claim \$40,000
- Claim 50% of \$40,000 = \$20,000
- Amount paid by Insurer is \$20,000 and the amount paid by you is \$20,000.

### PRIVACY

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information.

Austagencies Cinesure has developed a Privacy Policy which explains what sort of personal information we hold about you and what we do with that information.

Please contact your Financial Services Provider to obtain a copy of our Privacy

## DISPUTE RESOLUTION

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

If you are not satisfied with any of the following, please contact Austagencies Cinesure.

- This product.
- Our service.
- The service of our agents, loss adjusters or investigators.
- Our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy you, they will refer it to the appropriate manager who will immediately deal with the matter. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution staff.

Our internal dispute resolution staff will review the matter and will try to reach a satisfactory outcome. Once their review has been completed, they will advise you of our final decision within 15 working days. If they need longer, they will contact you and explain the reasons why. Our internal dispute resolution process is a free service to you.

If you are still not satisfied, you may request that the matter be referred to the lead insurer.

If you do not agree with the lead insurer's decision, the matter may be reviewed through The Insurance Ombudsman Service. The scheme is administered by Insurance Ombudsman Service Limited ABN 23 062 284 888.

The scheme is an external body that is independent of Austagencies Cinesure and the Insurers. It will investigate the matter and make its decision at no cost to you.

Information outlining the operations of The Insurance Ombudsman Service is available online at [www.insuranceombudsman.com.au](http://www.insuranceombudsman.com.au).

The purpose of the code is to raise the standards of practice and service in the general insurance industry.

The Code aims to improve:

- The quality, comprehension and accuracy of policy documents and other information provided to consumers.
- Employee and representative training and supervision.
- Claims handling and dispute resolution.

### **HOLD HARMLESS AGREEMENTS, CONTRACTING OUT, REMOVAL OF SUBROGATION RIGHTS:**

You will prejudice your rights of a claim, if, without prior agreement from your Insurer, you make any agreement that will prevent the Insurer from recovering the loss from a third party.

These "hold harmless" clauses are often found in leases, in maintenance or supply contracts from burglar alarm or fire protection installers and in building or repair contracts - if you are in doubt, please consult with us.

This notification requirement applies to all property covers and also to liability insurance.

### **INSURING THE INTEREST OF OTHER PARTIES:**

If you require the interest of a party other than the Named Insured to be covered, you **must** request this. Most policy conditions will exclude indemnity to other parties (e. g. mortgagees, lessors, principals, etc) unless their interest is properly noted on the Policy.

### **LIABILITY ASSUMED UNDER AGREEMENT:**

Liability cover provided by this policy does not cover liability which you have agreed to accept, unless you would have been so liable in the absence of such agreement.

### **GENERAL INSURANCE CODE OF PRACTICE**

The Insurers proudly support the General Insurance Code of Practice.

### **GENERAL INSURANCE BROKERS' CODE OF PRACTICE**

Austagencies Cinesure is a subscriber to the General Insurance Brokers' Code of Practice.

The Code is intended to promote good relations between brokers and insureds. It also promotes efficiency in transactions and describes standards of good practice and level of service to be expected from brokers.

### **IMPORTANT INFORMATION ABOUT GOODS AND SERVICES TAX**

This policy has provision for payment of Goods and Services Tax:

- by you in relation to premiums;
- by us in relation to claims.

### **GOODS AND SERVICES TAX**

**GST** and **Input Tax Credit** have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

**Taxable Percentage** is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

Where we pay a claim and you are liable to pay GST in respect of your claim, we will cover you for that GST, less any Input Tax Credit you may be

able to claim from your purchase of goods and services. We will pay this amount in addition to the sum insured/limit of liability shown in the schedule. Where our settlement of your claim is less than the total loss, we will only pay your liability for GST (less your entitlement to any Input Tax Credit) applicable to the settlement. This means that if your sum insured/limit of liability is not sufficient to cover your loss, we will only pay GST that relates to our settlement of your claim.

You must advise us of your correct Taxable Percentage. Any GST liability arising from your incorrect advice is payable by you.

# GENERAL POLICY CONDITIONS

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## APPLICABLE TO ALL SECTIONS

1. This Policy applies to productions filmed only in the geographic areas detailed in the schedule.
2. If the Insured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall become void and all claims thereunder shall be forfeited.
3. This insurance does not cover any loss or damage which, at the time of happening of such loss or damage, is Insured by or would, but for the existence of this Policy, be insured by any other existing policy or policies, except in respect of any excess beyond the amount which would have been payable under such other policy or policies, had this Insurance not been effected.
4. If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions for the time being in force. Where any difference is by this condition to be referred to arbitration, the making of an award shall be a condition precedent to any right of action against the Insurers.
5. The due observance and fulfilment of the terms of the Policy and endorsements thereto insofar as they relate to anything to be done or complied with by the Insurer and the truth of the statements and answers in the Proposal and Declaration shall be conditions precedent to any liability of the Insurers to make any payment under this Policy.

6. The Insured shall, at the expense of the Insurers and in the name of the Insured, do and concur in doing and permit to be done, all such acts and things as may be necessary or reasonably required by the Insurers for the purpose of enforcing any rights and remedies against or of obtaining relief or indemnity from other parties to which the Insurer shall be or would become entitled or subrogated upon the Insurers paying any loss under this Policy, whether such acts and things shall become or be necessary or required before or after such payment.

## 7. REINSTATEMENT CLAUSE:

In the event of the property under this Policy being lost or damaged by an insured peril, the basis upon which the amount payable under each of the said items is to be calculated, shall be the reinstatement of the property lost or damaged, subject to the following special provisions and subject to the terms and conditions and sums insured of the Policy except insofar as they may be varied hereby.

"Reinstatement" shall mean:

- 7.1 Where property is lost, its replacement by similar property in a condition equal to but not better or more extensive than its condition when new.
- 7.2 Where property is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same but not better or more extensive than its condition when new.

## Special Provisions:

- 7.2.1. The work of reinstatement must be commenced and carried out with reasonable despatch, otherwise no payment beyond the amount



7.2.2. When any property insured under this endorsement is damaged in part only, the liability of the company shall not exceed the sum representing the cost which the company could have been called upon to pay for reinstatement if such property had been wholly lost.

7.2.3. In the event of damage to any item insured hereunder caused by any peril hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount that the sum insured of such item bears to the sum representing the cost which would have been incurred in reinstatement if the whole of such item had been destroyed but not exceeding the sum insured expressed in the Schedule;

PROVIDED that if the sum actually incurred or expended in replacing the damaged property, within the meaning of sub-paragraph 7.1 of the hereinmentioned definition of reinstatement, exceeds the amount which would have been payable under this Policy if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so ,actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

7.2.4. No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred;

PROVIDED that where the Insured reinstates or replaces any loss or destroyed property not a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.

7.2.5. All other insurances covering the property effected by or on behalf of the Insured shall be on a similar reinstatement basis.

7.2.6. Where by reason of any of the above Special Provisions, no payment is to be made beyond the amount which would have been payable under the Policy if this endorsement had not been incorporated herein the rights and liabilities of the company and the Insured in respect of loss or damage shall be subject to the terms and conditions of the Policy, including and Condition of Average therein, as if this endorsement had not been incorporated therein.

## EXCLUSIONS

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### APPLICABLE TO ALL SECTIONS

- (a) Loss, damage, destruction, or liability caused by or arising directly or indirectly from:
  - (i) war, invasion, act of foreign enemy, hostilities (whether war be declared or not).
  - (ii) civil war, conspiracy, rebellion, revolution, insurrection, mutiny, riot, strike, block-out, civil commotion, military or usurped power.
  - (iii) terrorism; being an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to an act of terrorism.
  - (iv) confiscation, commandeering, requisition or destruction or damage by order of any government (whether lawfully constituted or otherwise) or by any public authority.

- (b) Loss or destruction of or damage to any property whatsoever resulting or arising therefrom or any consequential loss directly or indirectly caused or contributed to by or arising from:
  - (i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion nuclear fuel.
  - (ii) The radioactive, toxic, explosive or other hazardous properties on any explosive nuclear assembly or nuclear component thereof.

(c) **Date Recognition Special Exclusion -**

There is no insurance under this policy in respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with the failure or inability of any

a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device, or any

b) media or systems used in connection with any of the foregoing

whether the property of the Insured or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date

including, but without being limited to, any failure or inability to recognise, capture, save, retain, or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with

i) anything referred to in a) or b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time, or

ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in a) or b) above.

**Exception to Date Recognition Special Exclusion**

However, this special exclusion will not exclude any claim for subsequent loss or destruction of or damage to any property or consequential loss which is solely and directly caused by a Defined Contingency (as defined hereunder), arising under any of the sections listed hereunder, but only to the extent that such claim would otherwise be insured under those sections.

Section II Props, Sets and Wardrobe

Section III Miscellaneous Equipment

Section IV Money

Section VI Extra Expense

Section VII Negative Film

Section VIII Faulty Stock, Camera and Processing

This special exclusion does not apply in respect of the following sections, if provided by this policy,

Section I Film Producers' Indemnity

**Definition**

For the purpose of this special exclusion only, 'Defined Contingency' shall mean fire, lightning, explosion (other than loss or destruction of or any damage to boilers or pressure vessels), aircraft and other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, escape of water from any tank apparatus or pipe, impact by any road vehicle or animal, or theft (other than theft by employees).

(d) **Electronic Data and Software Exclusion** - There is no insurance under this policy in respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with:

- a) (1) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software,
- (2) error in creating, amending, entering, deleting or using Electronic Data and/or Software, or
- (3) total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing by electronic or electromechanical data processing or electronically controlled equipment.

Software means programs, procedures, and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

b) However, for all sections of the policy or policies except those dealing specifically with public liability and/or products liability and/or machinery, in the event that a peril listed below (being a peril insured by this policy but for this exclusion) is caused by any of the matters described in paragraph a) above, this Policy, subject to all its provisions, will insure:

- (1) physical loss of or damage or destruction to property insured directly caused by such listed peril and/or,

- (2) consequential loss insured by this policy.

Further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this policy but for this exclusion) causes any of the matters described in paragraph a) above -

fire, lightning, thunderbolt, aircraft or other aerial devices or articles dropped therefrom, earthquake, subterranean fire, volcanic eruption, storm, tempest, rainwater, snow, sleet, wind, hail, water, liquids or substances discharged, overflowing or leaking from fixed apparatus, fixed appliances, fixed pipes or other systems, riots, civil commotions, strikes or locked out workers or persons taking part in labour disturbances, explosion, impact by vehicles, animals or trees or branches of trees, communication masts, towers, antennae, satellite dishes, watercraft, meteorites, or theft of Electronic Data and/or Software solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data and/or Software.

However, this exclusion does not apply to any section of the policy dealing specifically with glass.

## SECTION 1

### Film Producers' Indemnity

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#### APPLICABLE ONLY IF SHOWN IN THE SCHEDULE

#### I. INSURING AGREEMENT:

The Insurers agree to pay to the Insured such loss (as defined in Paragraph VII as the Insured shall directly and solely sustain by reason of the named person(s) (as listed in Paragraph II below) being prevented by their death, injury or sickness, occurring during the currency of the insurance afforded by this Section, from commencing or continuing or completing their respective duties or performances in the motion pictured production provisionally entitled as shown in the Policy Certificate of Insurance Schedule.

#### II. NAMED PERSON(S):

The named person(s) referred to in Paragraph I above are those noted in the Policy Certificate of Insurance Schedule.

#### III. SPECIAL CONDITIONS:

##### (a) Terms Of Coverage:

- (1) Coverage under this Section commences on the effective date as shown in the Schedule attaching hereto and shall continue to the end of principal photography of the insured production which is defined as the continuing period of time from the starting date to the finishing date actually required by the Insured to photograph the screenplay.

##### (b) Medical Examination:

- (1) The named person(s) listed in Paragraph II above, must be examined not more than seven (7) days prior to commencement of cover by a duly qualified physician, designated or approved by the Insurers, who shall submit to the Insurers a medical questionnaire and certificate on forms approved by the Insurers and signed by the examinee.
- (2) The coverage provided by this Section is subject to receipt of the medical certificate and approval thereof by the Insurers. It is understood that the Insurers' right of medical certificate approval shall be based on the medical examination and case history of the named person(s). Should the Insurer (based on the examining physician's findings and/or case history of examinee) for any reason make any reservation, exception or restriction in respect to the insurability of any person proposed to be named, the provisions of Paragraph I, are inapplicable to the extent that the conditions referred to in said reservation, exception or restriction directly or indirectly causes a loss (as defined in Paragraph VII).

#### IV. LIMIT OF LIABILITY:

- (a) The Insurers' limit of liability is the insurable production cost (as defined in Paragraph VI) ultimately determined at the time of the final audit of insurable production costs subject however, to Sub- Paragraph (b) and (c) of this Paragraph IV.

- (b) The Insurer's liability for each loss separately occurring shall only be to pay the excess of the figure shown on the policy schedule.
- (c) The Insurers' limit of liability, in any event, shall not exceed that shown in the policy schedule.

#### **V. DETERMINATION OF PREMIUM:**

- (a) The basis of determining the actual premium earned by this Section shall be the insurable production cost (as defined in Paragraph VI) of the insured production, which cost will be ascertained upon the completion of principal photography of the insured motion picture production and a final report of such cost shall, at the Insurers' expense, be prepared by an auditor approved by the Insurers.

The Insured shall advise the Insurers of the exact date of termination of principal photography of the insured motion picture production within seven (7) days of that termination date.

- (b) A deposit premium calculated by applying the rates set forth in the rating schedule (attached to and made a part of this Section) to the estimated insurable production cost (as defined in Paragraph VI) of the insured motion picture production shall be paid to the Insurers.

The actual premium earned by this Section shall be calculated by applying the rates set forth in the above referred to rating schedule to the cost indicated by the final report of the auditor.

- (c) The Insured may, at its sole discretion, suspend or abandon principal photography of the insured motion picture production at any time upon written notice to such effect by the Insured to the Insurers. If abandonment is specified then principal photography of the abandoned production shall be deemed to have been completed for the purposes of this insurance upon the giving of said written notice by the Insured to the Insurers. If the Insured thereafter desires to resume principal photography of the abandoned production and to reinstate insurance under this Section, then same shall be made the subject matter of a separate negotiation. In the event suspension of principal photography is specified in the notice from the Insured to the Insurers, then the insurance afforded by this Section shall remain in effect and principal photography of the insured motion picture production shall be deemed to be continuing for the purpose of determining the amount of premium due and principal photography shall only be deemed completed if the Insured notified the Insurers within seven (7) days of the date that principal photography was discontinued. Permission is granted to the Insured to abandon production during the suspension period.

#### **VI. DEFINITION OF INSURABLE PRODUCTION COST:**

The term "insurable production cost" as used in this Section shall mean all costs including overhead chargeable directly to the production including such amount of other overhead as may be declared by the Insured at the time of declaration of the motion picture production as being applicable thereto, except that the cost of the story and/or scenario and/or music rights and/or sound rights and/or royalties and/or continuity and/or permanent sets and/or owned wardrobe and/or owned props and/or owned equipment and/or costs after completion of principal photography and/or premiums paid for this insurance and/or interest on loans shall not be included. However, the Insured may, if they so elect at the time of declaration, specifically declare and thereby include the cost of story and/or scenario and/or music rights

and/or sound rights and/or royalties and/or continuity, and in this event the cost of the items so included shall be included in the insurable production cost.

It is agreed that in the event of a loss paid under this Section the amount of that loss shall be included in the determination of the insurable production cost for the purpose of determining the entire premium due the Insurers in respect of insurance provided for the insured motion picture production.

In determining costs chargeable directly to the production any amounts in the nature of compensation for services rendered which the Insured may owe or had paid to any partner of the Insured, or officer or corporate director of the Insured, shall not be included except as part of overhead, unless the services rendered by such individual are in the capacity of producer, writer, actor or of a similar nature, including the services of a disbursing agent, the cost of which is specifically and directly related to the negative cost of the insured production.

## **VII. DEFINITION OF LOSS:**

- (a) Loss, as used in this Section, shall mean any extra expenditure (the word expenditure refers to the same costs as defined in Paragraph VI) incurred by the Insured in completing principal photography of the insured motion picture production over and above the actual and incurred expense, which, but for the happening of any one or more of the occurrences specified in Paragraph I, would have been incurred in completing said principal photography.
- (b) In the event that the happening of one or more of the occurrences specified in Paragraph I reasonably and practically prevents the completion of principal photography of the insured motion picture production, the Insured shall have the right to abandon principal photography with the prior consent in writing of the Insurers and claim under this Section for such actual expenditures (the word expenditure refers to the same costs as defined in Paragraph VI) incurred by the Insured in the production of principal photography of the insured production as to have been rendered substantially valueless solely and directly by reason of the happening of one or more of the occurrences specified in Paragraph I.
- (c) Before payment of total loss as provided above, the Insured shall surrender to the Insurers or its nominees all of its right, title and interest in film or videotape, sound and sound tracks and all copies thereof (whether negatives or positives), for the production costs of which and in connection with which the Insured shall have made claim hereunder. If the cost of story and/or scenario and/or music rights and/or sound rights and/or royalties and/or continuity have been included, the Insured shall do all things needful to assign and transfer all right, title and interest in all documents and copyrights in connection therewith to the Insurers or its nominees.

## **VIII. EXTENSIONS OF COVERAGE:**

- (a) In the event that principal photography of the insured production has not been completed by the termination date of the policy, the insurance afforded by this Section shall automatically be extended until completion of principal photography, subject to the payment of premium as set forth in the rating schedule attached to and made a part of this Section.
- (b) If as a result of delay in completing the original shooting schedule of the motion picture production the Insured incurs a loss (of the kind defined in Paragraph VII) in order to honour the termination date contained in a performance contract between the Insured and a named person(s) designated for insurance under this Section, such loss

(hereinafter referred to as a stop date loss) would not be covered by the provisions of this Section, but this Section will, nonetheless, participate in a stop date loss to the extent that the need to incur loss is directly related to a loss insured under the terms of this Section. The extent of the Insurers' participation in a stop date loss will be governed by the proper consideration of the following factors:

- (1) If the need to incur the stop date loss is solely and directly the result of an insured loss, the stop date loss will be recoverable in full;
  - (2) If the need to incur the stop date loss arises in part by reason of an insured loss and also arises in part by reason of an uninsured occurrence so that it can reasonably be said that each contributed to the incurrence of the stop date loss, then the extent that each so contributed shall be determined and an apportionment of the stop date loss shall accordingly be made;
  - (3) If the need to incur the stop date loss is in no way connected with an insured loss, no part of the stop date loss will be recoverable;
  - (4) Extension of coverage afforded by this Paragraph VII (b) is subject to the proviso that the performance contract term was sufficiently longer than the Insured's original schedule time for completion of principal photography so as to allow a reasonable margin of safety to cover possible delay in completing principal photography.
- (c) All other terms and conditions of the Policy and this Section not inconsistent with the above remain in force.

#### **IX. EXCLUSIONS:**

- (a) No loss shall be recoverable under the insurance afforded by this Section as a result of:
- (1) Any person(s) named and accepted for insurance under this Section taking part in flying other than as a passenger on an aeroplane or helicopter;
  - (2) Any person(s) named and accepted for insurance under this Section taking part in any hazardous stunt(s) without the written consent of the Insurers;
  - (3) The inability of any female named and accepted for insurance under this Section to continue her performance because of pregnancy, menstruation or conditions pertaining thereto;
  - (4) The inability of any person(s) named and accepted for insurance under this Section to sing arising out of an impairment of the voice unless caused by accidental injury or sickness;
  - (5) Any person(s) named and accepted for insurance under this Section being in a state of intoxication or drug addiction;
  - (6) The taking (other than under qualified medical or dental supervision) of any drug lawfully available only on prescription by a qualified medical practitioner or dental surgeon or any other drug unless taken in conformity with the instruction of the manufacturer or prescribing chemist, doctor or dentist.
- (b) If any uninsured event occurs before, concurrently with, or after the death, injury or sickness to a person(s) named and accepted for insurance under this Section, which event directly or indirectly contributes to increase a loss otherwise recoverable under

the terms of this Section, then the portion of any such loss so contributed to by such uninsured event shall not be a loss recoverable hereunder.

**X. LOSS PROCEDURE:**

**(a) Notice Of Incapacity And Right Of Further Medical Examination**

Promptly after the Insured is made aware of the fact of any person named hereunder being unable to continue his or her duties as a result of which a claim might arise under this Section, the Insured shall notify the Insurers and shall, if requested by the Insurers procure and immediately forward to the Insurers the certificate of a duly qualified physician which shall detail fully the circumstances in which the incapacity arises, and the Insured shall use its best efforts to ensure the preserve to the Insurers the continuing right of examining at all reasonable times during the currency of this insurance by its own appointed medical doctor or any named person in respect of whose incapacity a claim shall rise. Insured hereby agrees that its failure to comply with any of the conditions set forth in the preceding sentence will prejudice the Insurers and that the Insured's failure to comply shall release the Insurers from any specified claim in connection with which the Insured has so failed to comply with any of said conditions.

**(b) Insured's Obligation In Event Of Loss**

In the event of the happening of one or more of the occurrences specified in Paragraph I, the Insured shall do and concur in doing all things reasonably practical to prevent a loss (as defined in Paragraph VII).

## **SECTION 2**

### **Props, Sets and Wardrobe**

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#### **APPLICABLE ONLY IF SHOWN IN THE SCHEDULE**

#### **I. INSURING AGREEMENT:**

The Insurers agree to pay to or on behalf of the Insured the value of scenery, costumes and theatrical property and equipment, not including loss of use, owned by the Insured or which is the property of others for which the Insured is legally liable and which is lost, damaged or destroyed during the term of coverage (defined in Paragraph IV), caused by the perils insured against, while such property is used or to be used in connection with the motion picture production provisionally entitled as shown in the Policy Certificate of Insurance Schedule.

#### **II. LIMITS OF LIABILITY:**

The insurers' limit of liability with respect to any one occurrence shall not exceed the amount declared as the limit of liability in the application and declaration sheet submitted in connection with the insured production. In any event the Insurers limit of liability shall not exceed that shown in the Policy Certificate of Insurance Schedule with respect to any one occurrence, except that with respect to antiques, objects of art, furs, watches, pearls, precious and semi-precious stones, gold, silver, platinum and other precious metals or alloys, the Insurer shall not be liable for more than \$5,000 with respect to any one occurrence.

#### **III. DEDUCTIBLE:**

The sum shown in the Policy Certificate of Insurance Schedule shall be deducted from each adjusted claim hereunder.

#### **IV. TERM OF COVERAGE:**

The insurance afforded under this coverage commences on the effective date as shown in the Schedule attaching hereto and shall continue until thirty (30) days following completion of principal photography of the insured production.

#### **V. PERILS INSURED:**

This Coverage insures against risks of direct physical loss or damage to the property covered from any external cause, except as hereinafter excluded.

#### **VI. PERILS NOT INSURED:**

This Coverage does not insure against loss or damage caused by or resulting from:

(a) Moths, vermin, inherent vice, wear, tear, gradual deterioration, dampness of atmosphere, extremes or changes of temperatures, shrinkage, evaporation, loss of weight, leakage of contents, unless caused by a peril not otherwise excluded;

- (b) Any work, process, experimentation, tests, repairing, restoration, conversion or partial conversion, retouching, painting, cleaning or any other form of process performed or undertaken by or on behalf of the Insured or at the Insured's direction, unless accidental fire or explosion ensues and then only for the loss or damage caused by such ensuing fire or explosion;
- (c) Shortage of inventory (including unexplained shortage);
- (d) Mysterious disappearance;
- (e) Rain, sleet, snow or hail, whether driven by wind or not, to property stored in the open;
- (f) Any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, within the property or facilities used by the Insured in connection with the insured motion picture production, unless fire ensues and then the Insurers' liability shall be limited to that portion of the loss caused by such ensuing fire;
- (g) Breakage of the lighting element of any theatrical apparatus unless caused by fire, lightning, earthquake or attempted theft;
- (h) Damage to or destruction of property caused intentionally by or at the direction of the Insured.

## **VII. PROPERTY EXCLUDED:**

This Coverage does not insure:

- (a) Cameras and camera equipment, sound recording and reproducing apparatus and equipment and appurtenances thereto, projection equipment and apparatus;
- (b) Animals, growing plants (unless used as part of a theatrical set), currency, money, notes, securities, stamps, deeds, evidences of debt, letters of credit, credit cards, passports and railroad, airline or other tickets;
- (c) Permanent buildings including, but not limited to, improvements and betterments. This exclusion does not apply to buildings or structures constructed in connection with the specifically declared production.
- (d) Furniture and fixtures which are not used or intended to be used as part of a theatrical set;
- (e) Aircraft, watercraft, motorcycles, motor vehicles, or other conveyances except while being used as part of a theatrical set and not being self-propelled;
- (f) Film or tape unless used as a prop on a theatrical set;
- (g) Breakage or theft of glassware, porcelains, chinaware or similar fragile articles, unless caused by theft or attempt thereat, vandalism, or by fire, lightning, windstorm, earthquake, explosion or collapse of building.

**VIII. DETERMINATION OF PREMIUM:**

The premium shall be determined in accordance with the rating schedule to and made a part of this Section.

**IX. VALUATION:**

It is understood and agreed that the basis of determining the value of the property insured hereunder shall be the actual cash value as of the date and location of loss, damage or destruction, not exceeding, however, the amount which it would cost to repair or replace such property with material of like kind and quality.

**X. LOSS PROCEDURE:**

On the happening of any loss or damage the Insured shall promptly give notice thereof to the Insurers detailing the circumstances and within thirty (30) days after such loss or damage shall have come to their knowledge deliver to the Insurers a claim in writing containing as particular an account as may be reasonably practicable of all the property lost or damaged and of the amount of the loss or damage in respect thereof having regard to the value of the property at the time of the loss or damage. The Insured shall also produce and give to the Insurers all such books of account, vouchers, invoices, documents, proofs and information as may be reasonably required.

## SECTION 3

### Miscellaneous Equipment

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#### APPLICABLE ONLY IF SHOWN IN THE SCHEDULE

This policy and the schedule shall be read together as one contract and any work or expression to which a specific meaning has been attached in any part of the Policy or of the Schedule shall bear such meaning wherever it may appear.

Whereas the Insured by a signed Proposal and Declaration (which shall be the basis of this contract and deemed to be incorporated herein) has applied to the Insurers named herein or to Insurers by whose names are with the consent of the Insured substitute therefore by memorandum hereon or attached hereto signed by or on behalf of all Insurers (such Insurers or substituted Insurers being hereinafter called "the Insurers") and paid or agreed to pay the premium for the insurance expressed herein.

Now it is hereby agreed subject to the terms exclusion and conditions thereof that if at any time during the Period of Insurance the Property or any part thereof by physically lost or damaged by any cause not hereinafter excluded while within the Territorial Limits stated in the Schedule including transit within such Limits then the Insurers each for the proportions set against its name in the Schedule will indemnify the Insured against such loss or damage.

The liability of the Insurers under this Policy in respect of any loss or in the aggregate in respect of all losses occurring during the Period of Insurance shall not exceed the Sum Insured shown in the Policy Certificate of Insurance Schedule. The liability of each of the Insurers individually shall not exceed the proportion set against its name in connection with the motion picture provisionally entitled as shown in the Policy Certificate of Insurance Schedule.

#### EXCLUSIONS

The policy does not extend to indemnify the Insured against:

1. Loss or damage arising from:
  - (a) Mechanical or electrical breakdown or the application of the wrong current;
  - (b) Derangement unless caused by overturning of or collision involving a vehicle in which the insured property is being conveyed;
  - (c) Scratching or bruising of furniture and the like;
  - (d) Breaking of property wholly or partly of a brittle nature, unless caused by Fire or Thieves or by Accident to the vessel or conveyance in which such property is being transported;
  - (e) Action of light or climatic or atmospheric conditions or extremes of temperature, unless such loss or damage would be recoverable under an ordinary fire insurance policy;
  - (f) Confiscation or detention by Customs or Government Officials;
  - (g) Moth, vermin, wear, tear and/or gradual deterioration;
  - (h) Breakage of valves, filaments and the like;
  - (i) Loss of magnetism and rubbing out of visual or sound tapes;
  - (j) Overheating of lighting or projection apparatus;

- (k) Faulty projection or faulty manipulation of apparatus;
  - (l) Scratching of lenses.
2. Loss either by disappearance or shortage if such loss is only revealed through stocktaking.
  3. Loss or damage arising through theft from any unattended unlocked vehicle.
  4. The amount of any Excess as defined in the Policy Schedule or Specification.
  5. Consequential loss or damage which the Insured may suffer as a result of the loss or use or malfunction of the property insured or by reason of claims by third parties for failure to fulfil any contract, or any other consequential loss of any kind.
  6. Loss or damage by theft or dishonesty committed by any servant in the employment of the Insured.
  7. Damage to the property hereby insured which may be sustained whilst the same is undergoing any trade process or is being cleaned, repaired, renovated, restored or worked upon, and directly resulting therefrom.
  8. Loss or damage directly or indirectly caused by or contributed to by or arising from:
    - (i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
    - (ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
    - (iii) War, invasion, act of foreign enemy, hostilities (whether war declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, riot or civil commotion;
    - (iv) Pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speed.
  9. Loss of or damage to the property hereby insured sustained during transit when packing, having regard to the nature of the objects insured and the circumstances of the transport is clearly insufficient; but this exclusion shall not apply to which may be taken by the Insured or his employees or third parties as hand or personal luggage or to property conveyed by road vehicles in conformity with the customs and usages of the trade.
  10. Loss of or damage to Computer Systems' Records.

## CONDITIONS

1. If the Premium for this Policy is based on estimates supplied by the Insured the additional information required by the Insurers in order to adjust the Premium (subject to any Minimum Premium which may have been specified) shall be supplied by the Insured within 30 days after the expiry or termination of this Policy.
2. Except by the operation of law, the interest in this insurance shall not be transferred without the written consent of the Insurers.

3. This insurance does not cover any loss or damage which at the time of the happening of such loss or damage is insured by or would, but for the existence of this Policy, be insured by any other existing policy or policies, except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this insurance not been affected.
4. The Insured shall take all reasonable precautions to prevent or minimize loss or damage as insured by this Policy.
5. On the happening of any loss or damage the Insured shall forthwith give notice thereof in writing to the Insurers detailing the circumstances and within thirty days after such loss or damage shall have come to their knowledge and at their own expense deliver to the Insurers a claim in writing and containing as particular an account as may be reasonably practicable of all the property lost or damaged and of the amount of the loss or damage in respect thereof having regard to the value of the property at the time of the loss or damage. The Insured shall also produce and give to the Insurers when and where and to whom and in the manner required by them and at their own expense all such books of account vouchers invoices documents proofs and information as may be reasonably required and they shall be bound to satisfy the Insurers by such reasonable evidence as they may require that the loss or damage claimed for has actually arisen from the clauses insured against. No property shall be abandoned to the Insurers.
6. If the Insured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims hereunder be forfeited.
7. If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf of the time being in force. Where any difference is by this condition to be referred to arbitration the making of award shall be a condition precedent to any right of action against the Insurers.
8. The Insured and any claimant under this Policy shall at the request and expense of the insurers do and concur in doing and to be done all such acts and things as may be necessary or reasonably required by the Insurers for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Insurers shall be or would become entitled or subrogated upon their paying or making good any loss or damage under this Policy whether such act is or thing shall become necessary or required before or after their indemnification by the Insurers.
9. The due observance and fulfilment of the terms and conditions and endorsement of this Policy by sending fourteen days notice by registered post or recorded delivery to the Insured at this last known address. In this event the shall return to the Insured a proportionate part of the premium for the unexpired period of Insurance.

## **EXCLUDED PROPERTY**

This Policy does not apply to:

- (a) Film Raw Stock, Exposed Film, Negatives, Positives, Matrices, Lavenders, Working Prints, Cutting Copies and Fine Grain Prints (Mute and/or Sound), Video Tapes or Sound Recordings.
- (b) Motor Vehicles and other mechanically propelled vehicles.

- (c) Aeroplanes, Gliders, Balloons and other aerial devices.
- (d) Ships, Vessels and Waterborne Craft.
- (e) Explosives of any kind.
- (f) Animals and Livestock.
- (g) Jewellery, Furs, Precious Metals and articles made therefrom and Objects d'art.
- (h) Theft by the Insured, their Agent and/or Employees.
- (i) Theft by Hirer, their Agent and/or any Employee of the Hirer.

### **AVERAGE CLAUSE**

Each item of this Policy is separately subject to the Conditions of Average, that is to say, if the property covered by such Item shall at the time of any loss be greater value than the Sum Insured thereon, the Insured shall only be entitled to recover hereunder such proportion of the said loss as the Sum Insured by such Item of this Policy bears to the total value of the said property.

## SECTION 4

### Money

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#### APPLICABLE ONLY IF SHOWN IN THE SCHEDULE

##### I. INSURING AGREEMENT:

The Insurers agree to pay to the Insured, such loss as the Insured shall directly and solely sustain as a result of loss of or damage to money (which term shall mean current coin, bank notes, currency notes, cheques including non-negotiable cheques, postal orders, money orders, unused postage and revenue stamps when such money is the property of the Insured or the property of others for which the Insured is legally liable.

##### II. LIMIT OF LIABILITY:

The Insurers' limit of liability with respect to any one occurrence shall not exceed the amount declared as the limit of liability in the application. In any event, the Insurers' limit of liability shall not exceed the amount shown in the Policy Certificate of Insurance Schedule with respect to any one occurrence.

The Insurer's liability for each loss separately occurring shall only be to pay the excess of the figure shown on the Policy Certificate of Insurance Schedule.

##### III. TERMS OF COVERAGE:

The insurance afforded under this Coverage commences on the effective date as shown in the Schedule and shall continue to the expiry date shown in the aforementioned Schedule.

##### IV. PERILS INSURED:

This Coverage insures against all risks of direct or physical damage except as hereinafter excluded.

##### V. PERILS NOT INSURED:

This Coverage does not insure against loss or damage caused by or resulting from :

- (a) Shortages resulting from clerical or accounting errors or due to errors in receiving or paying out;
- (b) Loss not discovered within three working days of the occurrence;
- (c) The collusion of or the fraudulent embezzlement by or the fraudulent misappropriation by the Insured or any person or persons in the service of the Insured.
- (d) Money carried by professional money carriers, professional carriers or common carriers.

## VI. CONDITIONS:

- (a) The Insured shall take all reasonable precautions for the safety and protection of the property insured.
- (b) The Policy shall be voidable if there should be:
  - (i) Any material change in the risk after the commencement of this insurance ;
  - (ii) Misdescription, misrepresentation or non-disclosure of any material particular.
- (c) Upon the happening of any event giving rise or likely to give rise to a claim, the Insured shall:
  - (i) Give immediate notice to the police and to the Insurers;
  - (ii) Take all practicable steps to discover any guilty person or persons and to recover the property lost.

## **SECTION 5**

### **Public Liability**

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#### **APPLICABLE ONLY IF SHOWN IN THE SCHEDULE**

#### **I. INSURING AGREEMENT:**

The Insurers agree to pay to or on behalf of the Insured all sums for which the Insured shall become legally liable, for compensation (which expression does not include punitive or exemplary damages) in respect of:

- (a) Bodily injury (which expression in this Policy includes death and illness);
- (b) Loss of or damage to property including loss of use thereof;

Occurring during the period of insurance (as defined in Paragraph IV) as a result of an accident.

The Insurers will also pay all charges, expenses and law costs incurred by the Insurers or by the Insured with the written consent of the Insurers in the settlement or defence of claims for compensation in respect of which the Insured is entitled to indemnity under the Policy or if sustained would so be entitled and all charges, expenses and law costs recoverable from the Insured by claimants in connection with such claims.

#### **II. LIMIT OF LIABILITY:**

The Insurers' limit of liability with respect to any one occurrence shall not exceed the amount declared as the limit of liability in the application submitted in connection with the insured production. In any event the Insurers limit of liability shall not exceed the amount shown in the Policy Certificate of Insurance Schedule with respect to any one occurrence.

#### **III. DEDUCTIBLE:**

The sum shown in the Policy Certificate of Insurance Schedule shall be deducted from each adjusted property damage claim hereunder.

#### **IV. TERM OF COVERAGE:**

The insurance afforded under this Coverage commences on the effective date as shown in the Schedule attaching hereto and shall continue until the expiry date as shown in the aforementioned Schedule.

#### **V. EXCLUSIONS:**

This coverage does not apply to:

- (a) Liability for bodily injury or damage to property caused by or arising out of the use of any vehicle owned by or in the physical or legal control of the Insured or any attachment to such vehicle:
  - (i) Which is registered, or
  - (ii) In respect of which insurance is required by virtue of any legislation relating to motor vehicles,
  - (iii) Which is otherwise Insured in respect of the same liability, or

- (iv) Whilst such vehicle is involved or taking part in stunts.
- (b) Liability for bodily injury or damage to property caused by or arising out of the use of any trailer, aircraft or watercraft.
- (c) Liability for damage to personal property, used or to be used on theatrical sets or any equipment used or to be used in connection with the insured production, which property is rented or leased by the Insured, except for loss of use of such property.
- (d) Liability for bodily injury or damage to property arising directly or indirectly from explosion or collapse of boilers or their vessels under pressure:
  - (i) Owned by the Insured, or
  - (ii) In the physical or legal control of, or used by the Insured and in respect of which a certificate is required to be issued under the terms of any State or Regulation thereunder.
- (e) Liability for bodily injury or damage to property arising out of a breach of the duty owned in a professional capacity by the Insured and/or persons for whose breaches of such duty the Insured may be legally liable.
- (f) Liability for bodily injury or damage to property caused by or arising out of the use by the Insured as a landing area for aircraft, of any property or structure owned occupied or controlled by the Insured. The term "landing area" shall include any area on which aircraft land, take-off, are housed, maintained or operated.
- (g) Liability for bodily injury or damage to property caused by damage to any land or fixed property arising directly or indirectly from vibration.
- (h) Liability for bodily injury or damage to property:
  - (i) For which insurance against such liability (whether the insurance is limited in amount or not) is or would have been provided under a policy in a form prescribed or approved under or issued in pursuance of any workers' or workmens' compensation legislation or any extension of such policy granted on request as a matter of usual practice by Insurers authorised to issue such policies;
  - (ii) To or of any person in the service of the Insured which arises from a liability imposed by any Industrial Award or Agreement or Determination.

## **VI. ADDITIONAL PROVISIONS:**

Where the Insured is comprised of more than one party, the words "The Insured" shall be considered as applying to each party comprising "The Insured" in the same manner as if that party were the only party named herein as "The Insured".

## **VII. CONDITIONS:**

### **A. Claims:**

- (a) The Insured shall not without the consent in writing of the Insurers make any admission, offer, promise or payment in connection with any occurrence or claim and the Insurers if they so desire, shall be entitled to take over and conduct in the name of the Insured, the defence or settlement of any claim.

- (b) The Insured shall use the best endeavours to preserve any products, appliances, plant or things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable, no alteration or repair shall be made to any premises, fencing, machinery, furnishings, fittings, appliances or plant without the consent of the Insurers until the Insurers shall have had an opportunity of inspection.
- (c) The Insurers shall be entitled to prosecute in the name of the Insured at its own expense and for its own benefit, any claim for indemnity for damages or otherwise.
- (d) The Insurers shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as the Insurers may require in the prosecution, defence or settlement of any claim.

**B. Discharge Of Liabilities:**

The Insurers may at any time, pay to the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause, the amount of the limit of indemnity or such other amount specified in respect thereof (after deduction of any sum or sums already paid by the Insurers, which sum or sums would reduce the amount of unfulfilled liability of the Insurers in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment the Insurers shall relinquish conduct or control of and be under further liability under the Policy in connection with such claim or claims except, for costs, charges and expenses recoverable from the Insured in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by the Insurers or by the Insured with other written consent of the Insurers prior to the date of such payment.

**C. Cancellation:**

- (a) Method of Cancellation:
  - (i) The Insured at any time may cancel this Policy by notifying the Insurers in writing.
  - (ii) The Insurers at any time may cancel this Policy by notifying the Insured in writing of the date from which cancellation is to take effect Notification is to be delivered personally or posted by certified mail to the Insured or if the Insured is comprised of more than one party to the first named party at the address last notified to the Insurers.

Proof of mailing shall be sufficient proof of cancellation.

- (b) Adjustment of Premium:
  - (i) After cancellation by the Insured, the Insurers shall retain or be entitled to the premium for the period during which the Policy has been in force, based on the Insurers' cancellation rates or if applicable after adjustment in accordance with the Policy Conditions.
  - (ii) After cancellation by the Insurers, the premium for the period prior to cancellation shall be adjusted in the manner provided by the Policy Conditions or if inapplicable, the Insured shall be entitled to a pro-rata refund of the unexpired premium.
- (c) Notwithstanding the termination or cancellation of the Policy, the Insured shall furnish such particulars as the Insurers may require for the adjustment of the premium as aforesaid.

## SECTION 6

### Extra Expense

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#### APPLICABLE ONLY IF SHOWN IN THE SCHEDULE

#### I. INSURING AGREEMENT:

The Insurers agree to pay to the Insured such loss (not including loss of earnings or profit) as the Insured shall sustain by reason of such extra expense as the Insured necessarily incurs in the event of interruption, postponement or cancellation of the motion picture production shown in the Policy Certificate of Insurance Schedule, as a direct result of physical loss or damage to or destruction of property or facilities from any external cause, caused by the perils insured against, used by the Insured in connection with such production and occurring during the term of Coverage (defined in Paragraph IV) .

#### II. LIMITS OF LIABILITY:

The Insurers' limit of liability with respect to any one occurrence shall not exceed the amount declared as the limit of liability in the application and declaration sheet submitted in connection with the insured production. In any event the Insurers' limit of liability shall not exceed that shown in the Policy Certificate of Insurance Schedule with respect to any one occurrence.

#### III. DEDUCTIBLE:

The sum shown in the Policy Certificate of Insurance Schedule shall be deducted from each adjusted claim hereunder.

#### IV. TERM OF COVERAGE:

The insurance afforded under this Coverage commences on the effective date as shown in the Schedule attaching hereto and shall continue until thirty (30) days following completion of principal photography of the insured production.

#### V. PERILS NOT INSURED:

This Coverage does not insure against loss or damage caused by or resulting from:

- (a) Moths, vermin, inherent vice, wear, tear, gradual deterioration, dampness of atmosphere, extremes or changes of temperatures, shrinkage, evaporation, loss of weight, leakage of contents, breakage of glass or fragile materials, unless caused by a peril not otherwise excluded;
- (b) Any work, process, experimentation, tests, repairing, restoration, conversion or partial conversion, retouching, painting, cleaning or any other form of process performed or undertaken by or on behalf of the Insured or at the Insureds' direction, unless accidental fire or explosion ensues and then only for the loss or damage caused by such ensuing fire or explosion;
- (c) Shortage of inventory (including unexplained shortage);
- (d) Mysterious disappearance;

- (e) Damage to or destruction of property stored in the open caused by rain, sleet, snow or hail, whether driven by wind or not;
- (f) Any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, within the property or facilities used by the Insured in connection with the insured motion picture production unless fire ensues and then the Insurers' liability shall be limited to that portion of the loss caused by such ensuing fire;
- (g) Breakage of the lighting element of any theatrical apparatus unless caused by fire, lightning, earthquake, theft, or any attempt thereat;
- (h) Loss of use of animals including but not limited to injury, sickness or death of animals.
- (i) Loss of or damage to recorded video tape or exposed motion picture (developed or undeveloped);
- (j) Damage to or destruction of property and/or facilities caused intentionally by or at the direction of the Insured.

#### **VI. SPECIAL EXCLUSIONS:**

No loss shall be recoverable under the insurance afforded by this Section as a result of:

- (a) The cost of any direct or indirect property damage loss including expenditure incurred in the purchase, construction, repair or replacement of any physical property excluding animals;
- (b) Any uninsured event occurring before, concurrently with or after a loss covered hereunder, which event directly or indirectly contributes to increase a loss otherwise recoverable under the terms of this Section. If this occurs then the portion of any such loss so contributed to by such uninsured event shall not be a loss recoverable hereunder.

#### **VII. DEFINITION OF LOSS:**

Loss, as used in this Coverage, shall mean any extra expenditure incurred by the Insured in completing photography of the insured motion picture production over and above the actual and incurred expense, which, but for the happening of an occurrence or occurrences specified in Paragraph I, would have been incurred in completing said photography, or such actual expenditure incurred by the Insured in the production as shall be rendered entirely abortive happening of an occurrence except that the cost of the and valueless, directly by reason of the or occurrences as specified in Paragraph I, story and/or scenario and/or music rights and [or sound rights and/ or royalties and /or continuity and/or permanent sets and/or owned wardrobe and/or owned props and/or premium paid for this Insurance and/or interest on loans shall not be included.

#### **VIII. DETERMINATION OF PREMIUM:**

The premium shall be determined in accordance with the rating schedule attached to and made a part of this Section.

**IX. LOSS PROCEDURE:**

On the happening of any loss or damage, the Insured shall promptly give notice thereof to the Insurers, detailing the circumstances and within thirty (30) days after such loss or damage shall have come to their knowledge, deliver to the Insurers, a claim in writing containing as particular an account as may be reasonably practicable of all the property lost or damaged and of the amount of the loss or damage in respect thereof having regard to the value of the property at the time of the loss or damage. The Insured shall also produce and give to the Insurers, all such books of account, vouchers, invoices, documents, proofs and information as may be reasonably required.

## **SECTION 7**

### **Negative Film**

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#### **APPLICABLE ONLY IF SHOWN IN THE SCHEDULE**

##### **I. INSURING AGREEMENT:**

The Insurers agree to make good to the Insured, such loss (defined in Paragraph VI) as the Insured shall directly and solely sustain as a result of loss of, damage to or destruction of videotape stock, raw film stock, recorded videotape, exposed motion picture film (developed or undeveloped), interpositives, positives, work prints, cutting copies, fine grain prints and sound tracks and tapes used in connection therewith, caused by an insured peril (defined in Paragraph IV) when such property is the property of the Insured or the property of others for which the Insured is legally liable, while such property is used or to be used in connection with the motion picture production provisionally entitled:

##### **II. LIMITS OF LIABILITY:**

The Insurers' limit of liability is the insurable production cost (as defined in Paragraph VII) a ultimately determined at the time of the final audit of insurable production costs, including overhead, subject however to a maximum of the amount shown in the Policy Certificate of Insurance Schedule at any one loss.

##### **III. TERM OF COVERAGE:**

The insurance afforded under this Coverage commences on the effective date as shown in the Schedule attached and shall continue until the date on which a protection print or duplicate tape has been completed and physically removed from the premises where the original negative or tape is located, or until Coverage on the insured motion picture production shall be terminated by the Insured, or the Policy expires, whichever is earlier.

##### **IV. PERILS INSURED:**

This Coverage insures against all risks of direct physical loss or damage to the property covered from any external cause, except as hereinafter excluded.

##### **V. PROPERTY EXCLUDED :**

This Coverage does not insure cut-outs, unused footage or library stock.

## **VI. DEFINITION OF LOSS:**

- (a) Loss, as used in this Coverage, shall mean only such extra expenditure (the word "expenditure" refers to the same costs as defined in Paragraph VIII) incurred by the Insured to re-photograph in substantially the same manner only, that portion of the insured motion picture production, which is the subject of a loss claimed under the terms of the Coverage, over and above the actual and incurred expense, which, but for the happening of any one or more of the occurrences specified in Paragraph I, would have been incurred in completing that portion of the said motion picture production. It is understood, however, that loss arising from delay in the completion of the insured motion picture production is not recoverable under the terms of this Coverage, except such loss arising from delay as shall be both unavoidable and occur during the period of time necessary to re-photograph in substantially the same manner, that portion of the film which is the subject of a loss claimed under the terms of this Coverage.
- (b) In the event that the happening of one or more of the occurrences specified in Paragraph I, reasonably and practically prevents the completion of the insured motion picture production, the Insured shall have the right to abandon the insured motion picture production with the prior consent in writing of the Insurers and claim under this Coverage for such actual expenditure (the word "expenditure" refers to the same costs as defined in paragraph VIII) incurred by the Insured in the production of the insured motion picture as have been rendered substantially valueless, solely and directly by reason of the happening of one or more of the occurrences specified in Paragraph I.
- (c) Before payment of total loss as provided above, the Insured shall surrender to the Insurers or their nominees, all of its right, title and interest in films or videotapes, sound and sound tracks and all copies thereof (whether negatives or positives) for the production cost of which and in connection with which the Insured shall have made claim hereunder. If the cost of story and/or scenario and /or music rights and/or sound rights and/ or royalties and/or continuity have been included, the Insured shall do all things needful to assign and transfer all right, title and interest in all documents and copyrights in connection therewith to the Insurers or their nominees. .

## **VII. DETERMINATION OF PREMIUM:**

- (a) The Basis of determining the actual premium earned by this Coverage shall be the insurable production cost (as defined in Paragraph VIII) of the declared production, which cost will be based on and ascertained following the date upon which a protective print has been completed of the declared motion picture production (a final report of such cost shall, at the Insurers' expense, be prepared by an auditor approved by the Insurers).
- (b) A deposit premium calculated by applying the rates set forth in the rating schedule (attached hereto) to the estimated insurable production cost (as defined in Paragraph VIII) of the insured motion picture production shall be paid the Insurers.
- (c) The actual premium earned by this Coverage shall be calculated by applying the rates set forth in the above referred to rating schedule to the cost indicated by the final report of the auditor.

## **VIII. DEFINITION OF INSURABLE PRODUCTION COST:**

The term "insurable production cost" as used in this Coverage shall mean all costs including overhead chargeable directly to the production including such amount of other overhead as may be declared by the Insured at the time of declaration of the motion picture production as being applicable thereto, except that the cost of the story and/or scenario and/or music rights and/or sound rights and/or royalties and/ or continuity and/ or permanent sets and/or owned wardrobe and/or owned props and/or owned equipment and/or premiums paid for this insurance and/or interest on loans shall not be included. However, the Insured may, if they so elect at the time of declaration, specifically declare and thereby include the cost of story and/or scenario and/or music rights and/ or sound rights and/or royalties and/or continuity arising solely and directly as a result of an insured loss, and in this event, the cost of the items so included in the insurable production cost.

In determining costs chargeable directly to the production, any amounts in the nature of compensation for services rendered which the Insured may owe or had paid to any partner of the Insured, or officer or corporate director of the Insured, shall not be included except as part of overhead, unless the services rendered by such individual are in the capacity of producer, writer, actor or of a similar nature, including the services of a disbursing agent, the cost of which is specifically and directly related to the negative cost of the insured production.

## **IX. EXCLUSIONS:**

This Coverage does not insure against loss caused by or resulting from:

- (a) Fogging or the use of faulty materials (including cameras), faulty sound equipment or tracks, faulty developing, faulty editing or faulty processing.
- (b) Exposure to light, deterioration, atmospheric dampness or changes in temperature.
- (c) Faulty manipulating and/or judgement of cameraman and/or assistants.
- (d) Error (s) of judgement in exposure, lighting and/or sound recording.
- (e) Use of incorrect raw film stock or videotape.
- (f) Use of film, videotape, cameras, lenses and/or other photographic tape or sound equipment that has not been fully tested, by the Insured, and found to be in sound operating condition prior to the commencement of the filming or taping of the insured production.
- (g) Intentional destruction of duplicate work prints, offshoots, back-up takes or retakes.

## **SECTION 8**

### **Faulty Stock, Camera and Processing**

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#### **APPLICABLE ONLY IF SHOWN IN THE SCHEDULE**

#### **I. INSURING AGREEMENT:**

The Insurers agree to pay to the Insured, such loss (defined in Paragraph VI) as the Insured shall directly and solely sustain as a result of loss or damage to recorded videotape, exposed motion picture film (developed or undeveloped) and sound and tapes used in connection therewith, caused by fogging or the use of faulty materials (including cameras), faulty sound equipment or tracks, faulty developing, faulty editing or faulty processing when such property is the property of the Insured or the property of others for which the Insured is legally liable, while such property is used or to be used in connection with the motion picture production provisionally entitled as shown in the Policy Certificate of Insurance Schedule.

#### **II. LIMITS OF LIABILITY:**

The Insurers' limit of liability with respect to any one occurrence is the insurable production cost (defined in Paragraph VIII) subject to a maximum of the amount declared as the limit of liability in the application and declaration sheet submitted in connection with the insured production. In any event, the Insurers' limit of liability shall not exceed the amount shown in the Policy Certificate of Insurance Schedule with respect to any one occurrence.

#### **III. DEDUCTIBLE:**

The sum shown in the Policy Certificate of Insurance Schedule shall be deducted from each adjusted claim hereunder.

#### **IV. TERM OF COVERAGE:**

The insurance afforded under this Coverage commences on the effective date as shown in the Schedule attached and shall continue until the date on which a protection print or duplicate tape has been completed and physically removed from the premises where the original negative or tape is located, or until coverage on the insured motion picture production shall be terminated by the Insured, or the Policy expires, whichever is earlier.

#### **V. PROPERTY EXCLUDED:**

This Coverage does not insure cut-outs, unused footage or library stock.

## **VI. DEFINITION OF LOSS:**

- (a) Loss, as used in this Coverage, shall mean only such extra expenditure (the word "expenditure" refers to the same costs as defined in Paragraph VIII) incurred by the Insured to re-photograph in substantially the same manner, only that portion of the insured motion picture production, which is the subject of a loss claimed under the terms of this Coverage over and above the actual and incurred expense, which, but for the happening of any one or more of the occurrences specified in Paragraph I, would have been incurred in completing that portion of the said motion picture production. It is understood, however, that loss arising from delay in the completion of the insured motion picture production is not recoverable under the terms of this Coverage, except such loss arising from delay as shall be both unavoidable and occur during the period of time necessary to re-photograph in substantially the same manner, that portion of the film which is the subject of a loss claimed under the terms of this Coverage.
- (b) In the event that the happening of one or more of the occurrences specified in Paragraph I reasonably and practically prevents the completion of the insured motion picture production, the Insured shall have the right to abandon the insured motion picture production with the prior consent in writing of the Insurers and claim under this Coverage for such actual expenditure (the word "expenditure" refers to the same costs as defined in Paragraph VIII) incurred by the Insured in the production of the insured motion picture as have been rendered substantially valueless solely and directly by reason of the happening of one or more of the occurrences specified in Paragraph I.
- (c) Before payment of total loss as provided above, the Insured shall surrender to the Insurers or their nominees, all of its right, title and interest in films or videotapes, sound and sound tracks and all copies thereof (whether negatives or positives) for the production cost of which and in connection with which the Insured shall have made claim hereunder. If the cost of story and/or scenario and/or music rights and/or sound rights and/or royalties and/or continuity have been included, the Insured shall do all things needful to assign and transfer all right, title and interest in a documents and copyrights in connection therewith to the Insurers or their nominees.

## **VII. DETERMINATION OF PREMIUM:**

- (a) The basis of determining the actual premium earned by this Coverage shall be the insurable production cost (as defined in Paragraph VIII) of the declared productions, which cost will be ascertained upon the completion of principal photography of the insured production and a final report of such cost shall, at the Insurers' expense, be prepared by an auditor approved by the Insurers.
- (b) A deposit premium calculated by applying the rates set forth in the rating schedule (attached to and made a part of this Coverage) to the estimated insurable production cost (as defined in Paragraph VIII) of the insured motion picture production, shall be paid to the Insurers.
- (c) The actual premium earned by this Coverage for the insured motion picture production, shall be calculated by applying the rates set forth in the above referred to rating schedule to the cost indicated by the final report of the auditor.

## **VIII. DEFINITION OF INSURABLE PRODUCTION COST:**

The term "insurable production cost" as used in this Coverage, shall mean all costs, including overhead chargeable directly to the production, including such amount of other overhead as may be declared by the Insured at the time of declaration of the motion picture production, as being applicable thereto, except that the cost of the story and/or scenario and/or music rights and/or sound rights and /or royalties and /or continuity and/ or permanent sets and/or owned wardrobe and/or owned props and/or owned equipment and/or premiums paid for this insurance and/or interest on loans shall not be included.

However, the insured may, if they so elect at the time of declarations, specifically declare and thereby include the cost of story and/or scenario and/or music rights and/or sound rights and/or royalties and/or continuity arising solely and directly as a result of an insured loss, and in this event, the cost of the items so included shall be included in the insurable production cost.

In determining costs chargeable directly to the production, any amounts in the nature of compensation for services rendered which the Insured may owe or had paid to any partner of the Insured, or officer or corporate director of the Insured, shall not be included except as part of overhead, unless the services rendered by such individual are in the capacity of producer, writer, actor or of a similar nature, including the services of a disbursing agent, the cost of which is specifically and directly related to the negative cost of the insured production.

#### **IX. EXCLUSIONS:**

This Coverage does not insure against loss caused by or resulting from:

- (a) Faulty manipulating and/ or judgement of cameraman and/or assistants.
- (b) Error(s) of judgement in exposure, lighting and/or sound recording.
- (c) Use of incorrect raw film stock or videotape.
- (d) Use of cameras, lenses and/or other photographic tape or sound equipment that has not been fully tested by the Insured and found to be in sound operating condition prior to the commencement of the filming or taping of the insured production.
- (e) Intentional destruction of duplicate work prints, off shoots, back-up takes or retakes.

## **SECTION 9**

### **Errors and Omissions**

#### **Producers' Liability**

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#### **APPLICABLE ONLY IF SHOWN IN THE SCHEDULE**

#### **I. INSURING AGREEMENTS:**

In consideration of the premium to be paid and conditioned upon the payment thereof as herein specified, in reliance on the statements made in the application(s) attached hereto and made a part hereof, and subject to the limits of liability, conditions, exclusions and other terms set forth in this Policy Certificate of Insurance Schedule and the Declarations attached hereto, the Insurers agree as follows:

- A. To indemnify the Insured against liability for any sums which the Insured shall become legally obligated to pay as damages resulting from claims arising out of:
- (1) Invasion or infringement of or interference with the right of privacy or publicity, whether under common law or statutory law;
  - (2) Infringement of copyright or trademark, whether under statutory or common law;
  - (3) Libel, slander or other forms of defamation;
  - (4) Plagiarism, piracy, or unfair competition resulting from the alleged unauthorised use of titles, formats, ideas, characters, plots, performances or artists or performers or other material;
  - (5) Breach of contract, implied in fact or in law, resulting from the alleged submission, acquisition or use of program, musical or literary material used by the Insured in the Insured Production;

committed or alleged to have been committed in the business of the Insured in connection with the production, distribution, advertising, publicising, theatrical exhibition, television exhibition or radio broadcasting of the Insured Production; PROVIDED ALWAYS that such claims are first made against the Insured during the term of this Policy and written notice of such claims are first given to the Insurers by the Insured during the term of this Policy.

- B. To defend on behalf of and in the name of the Insured, any suit brought or claim made to recover damages or injunctive relief, or both, but reason of any of the matters as to which the Insurers are obligated to indemnify the Insured hereunder, even if such suit or claim is groundless, false or fraudulent.
- C. To Pay:
- (a) All costs and expenses incurred by the Insurers, in investigating, defending, settling or otherwise handling any suit or claim hereunder, costs taxed against the Insured in any suit and all interest on that part of any judgment entered which does not exceed the limit of the Insurers' liability thereon which accrues after entry of judgment and before the Insurers have paid or deposited or tendered in court that part of the judgment.
  - (b) Premiums on appeal bonds required in any such suit and premiums on bonds to release attachments or injunctions, provided the bond amount is not in excess of the remaining balance of the applicable limits of liability of this Policy, but without any obligation on the part of the Insurers to apply for or furnish any such bond.

- D. To indemnify the Insured against liability for any sums which the Insured shall become legally obligated to pay as damages on behalf of any distributor, exhibitor, radio or television broadcasting station or network, advertiser or advertising agency, sponsor or other licensee of the Insured, hereinafter for convenience together called "Exhibitor", liability for which is imposed upon the Insured by any written, oral or implied agreement with any such Exhibitor in which the Insured agrees to indemnify and hold harmless any such Exhibitor against liability from any third parties for damages incurred by such third party as the result of the distribution, advertising, publicising, exhibition or radio or television broadcasting of any Insured Production by reason of any other matters specifically stated in Insuring Clause above. This Policy shall not cover any liability assumed by the Insured for claims arising, or alleged to arise, out of the breach of contract, wilful act or failure to act of any such other party.
- E. In the event an injunction or court order is issued as a result of any of the matters as to which the Insurers are obligated to indemnify the Insured hereunder by a court of law of competent jurisdiction in any country in the territory of this Policy requiring that any Insured Production is so withdrawn, then within Policy limits the Insurers, in addition to their other obligations hereunder, will reimburse the Insured for its loss sustained by reason thereof. The term "loss" as used in this paragraph shall be deemed to mean advertising, promotion and exploitation costs and expenses incurred in connection with promotional and advertising material relating to the Insured Production to the extent that the value thereof is destroyed or lessened as a result of any such injunction or court order. Excluded from the "loss" category are any items not specifically set forth above, including, but not limited to the Insured's or any Exhibitor's production costs, loss of revenues, profits, network license fees or time sales revenues.
- F. Anything to the contrary herein notwithstanding, the Insurers shall not be obligated to make further payment on any claim, judgment or other item hereunder or to defend further any claim or suit after the applicable limit of the - Insurers liability under Insuring Agreements I.A. through I.E. inclusive has been exhausted by payments of judgments, settlements, defence costs and/or expenses.

## II. DEFINITIONS:

- A. The unqualified word "Insured" wherever used in this Policy means the Named Insured and any subsidiaries of the Named Insured, and any employee, officer, stockholder or director thereof while acting within the scope of his duties as such. If the Named Insured is a partnership or joint venture, the unqualified word "Insured" also includes any partner or joint venturer therein but only with respect to his liability as such.
- B. The term "Subsidiary" shall be deemed to mean a corporation at least 51% of the issued and outstanding capital stock of which having the right to vote for the election of directors is owned and controlled by the Named Insured.
- C. The term "Insured Production" shall mean the specific production referred to in the application or declaration attached to this Policy No other productions are covered hereunder unless and until a separate application therefor has been signed by the Insured, approved by the Insurers, and the production is endorsed onto this Policy.
- D. The term "Claim" wherever used in this Policy shall be deemed to mean all claims or suits against the Insured for damages by any one person, firm or corporation as a consequence of the same injurious act, error or omission, or the use or dissemination of the same injurious material, regardless of frequency of repetition thereof or the number or kind of media used.

If more than one person, firm or corporation join in making a claim or filing a suit as a consequence of the same injurious act, error or omission, they shall be considered as one person, firm or corporation for the purposes hereof.

- E. The terms "Advertising and Publicising" of the Insured Production wherever used in this Policy shall be deemed to mean advertising, publicising and promotion for the Insured Production made by or under the control of the Insured.

### III. CONDITIONS:

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

#### A. Limitations as to Liability:

- (1) The limit of liability stated in the Policy Certificate of Insurance Schedule as applicable to "each and every claim" is the limitation of the Insurers' liability with respect to any claim as defined in II. D. above. The limit of liability stated in the Policy Certificate of Insurance Schedule as "aggregate" is the total limit of the Insurers' liability for any and all claims as defined in II.D. above during the entire term of this Policy.
- (2) The addition of more than one insured shall not increase such limits of liability.
- (3) The limits of liability hereunder shall include all amounts payable on behalf of the Insured hereunder, including all sums paid as damages or otherwise in settlement of claims and for all legal and defence costs incurred by the Insurers under Insuring Agreements A. through E, inclusive.
- (4) The amount stated as "deductible" in the Policy Certificate of Insurance Schedule shall be borne by the Insured as its own risk and uninsured and shall be deducted from the total amount of all sums which the Insurers are obligated to pay or incur or paid in settlement of each claim on behalf of the Insured under this Policy The Insured's deductible shall include all amounts payable on behalf of the Insured as damages or paid in settlement of a claim and legal and defence costs incurred by the Insurers under Insuring Agreements A. through E. inclusive, including attorney's fees, court costs, appeal costs and other expenses incurred in the conduct of litigation and fees and expenses of attorneys and investigators incurred in the investigation or defence of any claim by reason of any matters covered by this Policy.
- (5) If more than one Production is insured hereunder, the limits of liability and deductibles shall apply separately to each production as shown in the Policy Certificate of Insurance Schedule.

#### B. Exclusions:

This Policy does not cover liability for, and there shall be no obligation to investigate or defend any claim or suit for:

- (1) Any obligation assumed by the Insured under any contract or based upon or resulting from any failure or alleged failure by the Insured to perform any contract, except as provided in Insuring Agreements A. (5) and D. hereof;
- (2) Any act or failure to act of the Insured where the Insured knows or reasonably should have known, that such act or failure to act is or would be a violation of the rights of others;

- (3) Any claim by any past or present employee, partner, joint venturer, officer or director of the Insured or any independent contractor of the Insured supplying matter, material or services to the Insured with respect to any property rights in or the use of any literary, musical or other material owned or alleged to be owned by any such party;
- (4) Any infringement of patent or breach of fiduciary relationship;
- (5) Any dishonest, fraudulent or malicious act or failure to act;
- (6) Punitive or exemplary damages; any violation of any criminal law, statute or ordinance or any criminal penalties;
- (7) The title of any Insured Production until a satisfactory title report is submitted to and approved by the Insurers and endorsed hereon.

**C. Term of Policy:**

The term of this Policy shall be as stated in the Declarations and the Policy shall expire on the date and at the time set forth in said Declarations, or as endorsed hereon. In the event that any additional Insured Production is added to this Policy by endorsement or Declaration, the term of coverage of this Policy for purposes of such Insured Production (but not for any other production insured hereunder) shall be the period set forth in such endorsement or declaration.

**D. Cancellation:**

The Policy may be cancelled by the Insured by mailing to the Insurers, written notice stating when thereafter such cancellation shall be effective. The Policy may be cancelled by the Insurers by mailing to the Insured, at the address shown in this Policy as a last known address, written Notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective, except that five (5) days written Notice will be given by the Insurers when cancellation is for non-payment of premium. The mailing of such Notice shall be sufficient proof of Notice and the effective date of cancellation stated in the Notice shall become the end of the Policy period. Delivery of such written Notice either by the Insured or by the Insurers shall be equivalent to mailing.

In the event this Policy is cancelled by the Insured, subject to the provisions of Article IV.F. herein contained, the Insurers shall retain the customary short rate earned premium hereunder for the period that this Policy has been in force or the full policy minimum premium, whichever is greater. If this Policy is cancelled by the Insurers, they shall retain the pro-rata earned premium hereunder for the period during which this Policy has been in force or the pro-rata minimum premium, whichever is greater. Premium adjustment shall be made as soon as practicable after cancellation, but the failure of the Insurers to tender premium refunds at the time notice of cancellation is given, shall not affect the validity of such notice.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

#### **E. Operative Clause:**

The company shall indemnify the Insured against any claim or claims (including all legal costs and expenses for which the insured shall become legally liable to the claimant) up to but not exceeding in the aggregate for all claims under this policy the total Sum Insured specified in the Schedule in respect of the indemnity provided under this Section being a claim or claims:

- (a) Made against the Insured during the Period of Insurance specified in of the Schedule;
- (b) Immediately notified in writing to the Company by the Insured during the Period of Insurance;
- (c) Arising out of any Act, error or omission which occurred subsequent to the Retroactive Date specified in the Schedule;
- (d) Provided that claims which do not accord with all of (a), (b) and (c) of this operative clause are not the subject of this insurance or any indemnity.

#### **F. Defence and Settlement:**

- (1) The Insurers shall have the right to take over and defend in the name of the Insured through counsel of the Insurers' choice, any claim which in the judgment of the Insurers, may ultimately involve it in any liability hereunder Upon the Insurers' request, the Insured, at its own expense, shall co-operate with the Insurers in the defence of any claim covered or alleged to be covered by this Policy, which co-operation shall include, but not be limited to, aiding in securing, compiling, summarising and analysing evidence and information and in obtaining the attendance of witnesses, attending hearings and trials and assisting in effectuating settlement and executing any and all documents which the Insurers may reasonably require in connection with the defence or disposition of nay such claim and in the prosecution of appeals.
- (2) The Insurers shall have the right to dispose of any claim by settlement or otherwise in its sole discretion. The Insured shall not incur any expense, make any payment, settle or otherwise dispose of any claim that may involve the Insurers in liability hereunder without first having obtained the written consent of the Insurers. The Insured shall not make any admission of liability either before or after an occurrence, which pertains to any claim or which may result in a claim for which the Insurers may be liable The Insured shall not interfere in any negotiations of the Insurers for settlement of or the handling of any claim with respect to which the Insurers are or may be liable under this Policy. After first notice of claim, the Insured shall not communicate with claimant or its representatives except with the consent of the Insurers. If the Insured shall refuse the settlement of any claim as authorized by the Insurers, the liability of the Insurers to the Insured as to such claim shall be limited to the amount for which settlement could have been made plus the Insurers' defence costs incurred prior to the date of such refusal, the Insurers being relieved of any further liability under any of the provisions of Article I hereof.

(3) If, prior to the first or any subsequent exhibition, including broadcast, of any Insured Production (including the first or subsequent broadcast of any new material), the Insured receives a Notice of Claim or notice that a claim will be made against them, the Insured, after notifying the Insurers, shall send a written report to the Insurers or their counsel stating that it has thoroughly investigated such claim or possible claim and satisfied themselves that such claim is baseless and the reasons therefore or, in the event of doubt as to the merit of such claim, so stating and thereafter consulting with the Insurers and their attorneys before proceeding with any exhibition, broadcast or rebroadcast.

(4) The Insured is obligated to and shall take such steps, at its own expense, to protect their and the Insurers' interests and to eliminate, mitigate or minimise the damages which may arise from any claim as would reasonably be taken in the absence of this or similar insurance, making such retractions and corrections to or in connection with any Insured Production as the Insurers may request;

PROVIDED HOWEVER that in the case of corrections, the cost of making the same shall be borne by the Insured and the Insurers in accordance with their respective deductible and liability limits elsewhere herein set forth. The requirements of this paragraph shall include the withdrawal from distribution, exhibition or broadcast of the claimed or alleged infringing Insured Production subject to the following qualifications:

(a) As to claims that have been reported to the Insurers, upon demand of the Insurers to the Named Insured for withdrawal from distribution, exhibition or broadcast, the liability of the Insurers for damages and all costs and expenses of defence or other costs or expenses under Article I arising from or connected with the claim underlying the said demand for withdrawal shall be limited to one-half (1/2) of all such damages, costs and expenses as shall occur after date of such demand in the event the Insured refuses, in its discretion, to make such withdrawal.

(b) All decisions by the Insured or the Insurers respecting any withdrawal must be exercised with good faith and reasonable justification in the respective evaluation of the claim in dispute.

(5) The Insurers shall not be liable for the costs or expenses of prosecuting or defending any claim unless the same shall have been incurred with the written consent of the Insurers. The cost and expense of prosecuting any claim in which the Insurers shall have an interest by subrogation or otherwise, shall be divided between the Insured and the Insurers proportionately to the amounts which they would be entitled to receive respectively if the claim should be successful.

(6) The Insurers may pay any part or all of the deductible amount to effect payment or settlement of any claim, and upon notification of the action taken, the Insured shall reimburse the Insurers within twenty (20) days thereafter for such part of the deductible amount as had been paid by the Insurers. The notice of payment of the deductible shall be sent to the Insured by ordinary mail, addressed to the Insured at the address set forth in this Policy and the twenty (20) day period shall begin to run from the mailing of such notice. Failure of the Insured to pay the amount of the deductible within twenty (20) days, as herein set forth shall void the Policy with respect to the claim involved.

(7) In the event the Insured fails to comply with any of the terms and conditions of this Policy, the disposition of any claim or defence of any claim by the Insurers shall not operate as a waiver by the Insurers of any rights it may have by reason of such failure.

**G. Clearance Routines:**

The Insured agrees that it will maintain and use reasonable clearance routines in connection with the acquisition, production, distribution and exhibition of the Insured Production, and advertising and publicising material relating thereto, and will use reasonable efforts to obtain from third parties from who it obtains materials and services written indemnities against claims arising out of the use of such material and services. If the Insured uses reasonable care to observe its clearance routines, any inadvertent failure on its part to do so shall not relieve the Insurers of their liability hereunder.

At the request of the Insurers, the Insured will furnish the Insurers copies of its clearance routines.

Clearance routines shall include, but not be limited to, reasonable steps to assure originality and ownership of literary and musical materials, to obtain appropriate contracts and releases from parties appearing in or contributing material to the Insured Production, and to assure freedom in the Insured Production from libelous material or material constituting a violation of any right of privacy or publicity.

**IV. ADDITIONAL PROVISIONS:**

**A. Subrogation:**

In the event the Insurers make any payment under this Policy, it shall, to the extent of such payment, become subrogated to all rights and remedies of the Insured in connection therewith against any other party. Upon the Insurers' request, the Insured shall execute all documents reasonably required by the Insurers, shall co-operate fully with the Insurers in the enforcement of such rights and remedies and at the request and expense of the Insurers, institute and prosecute in the name of the Insured, all legal proceedings deemed desirable by the Insurers for the enforcement of such rights and remedies.

**B. Statutory Provisions:**

If any term or condition of this Policy is contrary to any specific statutory provision applicable thereto, such term or condition shall be deemed to be severable and such statutory provision shall supersede and govern such term or condition, but the remaining provisions hereof shall remain in full force and effect.

**C. Territorial Limits:**

The territory of this Policy is the entire world, excluding however, the following countries: Communist China, North Korea, Tibet, Vietnam, Outer Mongolia, Albania, Bulgaria, Yugoslavia, Czechoslovakia, Poland, Hungary, Rumania, Cuba, Laos and Kampuchea

This Policy shall apply only to claims and damages occurring within, and to claims brought within and under the laws of the territory of this Policy.

This insurance shall be governed by the law of the territory, state or country where the policy was issued whose courts shall have jurisdiction in any dispute arising hereunder. For the purpose of this condition, the place of issue stated in the Schedule shall be conclusive.

**D. Other Insurance:**

It is agreed that in the event of there being specific or other insurance, whether prior or subsequent hereto in date and by whomsoever effected, directly or indirectly covering or insuring the risks insured herein, then such other insurance shall first apply and this Policy shall not be considered as contributing with such other insurance and the amount of any loss covered hereunder, not exceeding the limit of liability stated herein. Other insurance in excess of the limits of liability of this Policy Certificate of Insurance Schedule is permitted.

**E. Assignment:**

This Policy may not be assigned in whole or in part without the written consent of the Insurers.

**F. Premiums:**

The premium payable hereunder shall be as stated in the Declarations and endorsements attached hereto. The absolute minimum non-refundable premium shall be 75% of the total premium if this Policy is cancelled by the Insured before the first exhibition or broadcast of the Insured Production and 10% after first exhibition or broadcast of the Insured Production.

**G. Changes:**

This Policy, the Declarations and endorsements attached hereto, and the representations made in the Insured's Application for this Policy, constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and shall not be modified except by an instrument in writing executed by a duly authorised officer or agent of the Insurers.