

PRODUCER AND ENTERTAINMENT ADVANTAGE (ERRORS AND OMISSIONS)

TABLE OF CONTENTS

	pages
SECTION 1 – INSURING AGREEMENTS.....	3
Communications and Personal Injury Liability.....	3
Withdrawal Liability.....	3
Exhibitor Liability.....	3
SECTION 2 – EXCLUSIONS.....	3
SECTION 3 – LIMITS OF LIABILITY AND DEDUCTIBLE.....	4
SECTION 4 – DEFENSE AND SETTLEMENT.....	4
SECTION 5 – NOTICE OF CLAIMS.....	5
SECTION 6 – SUPPLEMENTAL PAYMENTS.....	6
SECTION 7 – CLEARANCE PROCEDURES.....	6
SECTION 8 – COOPERATION.....	6
SECTION 9 – GENERAL CONDITIONS.....	7
POLICY CHANGES.....	7
DECLARATIONS.....	7
NOTICE.....	7
SEPARATION OF INSURED.....	7
ASSIGNMENT.....	7
CANCELLATION.....	7
PAYMENT OF PREMIUM.....	7
OTHER INSURANCE.....	7
SUBROGATION.....	7
CURRENCY.....	7
BANKRUPTCY AND INSOLVENCY.....	7
ACTION AGAINST THE INSURER.....	7
RIGHT OF AUDIT.....	8
POLICY TERRITORY.....	8
SANCTIONS OR EMBARGOES.....	8
REIMBURSEMENT.....	8
SECTION 10 – DEFINITIONS.....	8
Asbestos products.....	8
Bankruptcy.....	8
Bodily injury.....	8
Claim.....	8
Companion materials.....	8
Damages.....	8
Defense costs.....	8
Independent contractor.....	8
Insolvency.....	8

Insured.....	8
Insured production.....	9
Loan-out corporation.....	9
Loss.....	9
Merchandising.....	9
Named Insured.....	9
Nuclear risk.....	9
Piracy.....	9
Policy period.....	9
Pollution incident.....	9
Prior and pending proceedings date.....	9
Property damage.....	9
Soundtrack compilations.....	9
Subsidiary.....	9
Title.....	9
Withdrawal costs or expenses.....	9

PLEASE READ THE POLICY AND TERMS CAREFULLY.

Please read this Form carefully to determine rights, duties, coverage and limitations.

Words and phrases in bold have special meaning as defined in SECTION 10 – DEFINITIONS.

In consideration of the payment of the premium and in reliance on all statements made and information furnished to the Insurer shown in the Declarations (hereinafter called the "Insurer") including the statements made in the application and its attachments which form part of this Policy, and subject to all the terms, conditions and limitations of this Policy, the Insurer agrees as follows:

SECTION 1 – INSURING AGREEMENTS

1. Communications and Personal Injury Liability

- 1.1. The Insurer agrees to pay on behalf of the **Insured** those **damages** and **defense costs** that the **Insured** is legally obligated to pay for covered **claims** for the following wrongful acts made in connection with the production, creation, distribution, exhibition, broadcast, dissemination, internet exploitation, publicizing or advertising of the **insured production**:
 - 1.1.1. defamation, including libel, slander or trade libel;
 - 1.1.2. invasion of or interference with the right of privacy or publicity, including eavesdropping, intrusion upon seclusion, false light, public disclosure of private facts and misappropriation of name or likeness;
 - 1.1.3. infringement of **title**;
 - 1.1.4. unauthorized use of names, trade names, trademarks, service marks, formats, ideas, characters, character names, plots, performances of artists or other performers, musical compositions, performances, slogans or any other program material contained in the **insured production**;
 - 1.1.5. **piracy**;
 - 1.1.6. infringement of copyright, whether under common or statutory law; or
 - 1.1.7. breach of contract, in fact or law, resulting from the alleged submission of program, musical or literary material or violation of common law property rights in literary or musical material that is used by the **Insured** in the **insured production**.
- 1.2. This insurance applies only if the wrongful acts in sub-paragraph 1.1. above first occur during the **policy period** and the **claim** is reported to the Insurer in compliance with **SECTION 5 – NOTICE OF CLAIMS**.

2. Withdrawal Liability

- 2.1. The Insurer agrees to pay on behalf of the **Insured** the **withdrawal costs or expenses** that the **Insured** is legally obligated to pay for a covered **claim** pursuant to a written contract or agreement due to the necessary withdrawal of the **insured production** for which a temporary restraining order or injunction is imposed which stops the manufacture, reproduction, distribution, broadcast, dissemination or exhibition of the **insured production**.
- 2.2. This insurance applies only if the temporary restraining order or injunction in sub-paragraph 2.1. above was imposed during the **policy period** and the **claim** is reported to the Insurer in compliance with **SECTION 5 – NOTICE OF CLAIMS**.

3. Exhibitor Liability

- 3.1. The Insurer agrees to pay on behalf of the **Insured** those sums the **Insured** is legally obligated to pay as **damages** on behalf of any exhibitor for a covered **claim** that results from the exhibitor's distribution, advertising, publicizing, exhibition or broadcasting of the **insured production** but only if the **Insured** has agreed in a written, oral or implied contract or agreement to pay and hold harmless the exhibitor for such **damages**.
- 3.2. The Insurer will not pay for any **claim** arising out of, or that is alleged to have resulted from, any negligence, breach of contract, willful act or failure to act by any exhibitor for any revision, addition, alteration or any other change made to the **insured production** by such exhibitor.
- 3.3. This insurance applies only if the exhibitor's distribution, advertising, publicizing, exhibition or broadcasting of the **insured production** in sub-paragraph 3.1. first occurs during the **policy period** and the **claim** is reported to the Insurer in compliance with **SECTION 5 – NOTICE OF CLAIMS**.

SECTION 2 – EXCLUSIONS

This Policy shall not apply to any loss resulting from claims:

1. made by any current or former director, officer, trustee, partner, joint venture or employee of the **Insured**;
2. made by an agent or **independent contractor** for, or arising out of, the ownership of or rights in or to matter or services supplied by such agent or **independent contractor**;
3. for or arising out of intentional false or misleading advertising, publicity or promotion;
4. based upon or arising out of any patent infringement or breach of a fiduciary relationship or duty;
5. based upon or arising out of any dishonest, fraudulent, criminal or malicious act or omission committed:
 - 5.1. by any **Insured**;
 - 5.2. by anyone for whom any **Insured** is legally responsible; or
 - 5.3. with the consent or knowledge of, or at the direction of, any **Insured**;
6. based upon or arising out of the **Insured's** breach of contract except as otherwise covered by sub-paragraph 1.1.7. of the Communications and Personal Injury Liability Insuring Agreement and the Exhibitor Liability Insuring Agreement;
7. based upon, arising from, or in any way related to an act that occurred prior to the Inception Date of this Policy if any **Insured** knew, or could have reasonably expected to know, that such act might give rise to a **claim**;
8. based upon, arising from or in any way related to:
 - 8.1. any civil, criminal, administrative or regulatory demand, suit, proceeding, litigation or investigation, including any order, decree, judgment or settlement pending on or prior to the **prior and pending proceedings date**; or
 - 8.2. the same or similar facts as those alleged in such pending or prior demand, suit, proceeding, litigation or investigation;
9. for **bodily injury** or **property damage**;

10. based upon or arising out of:

- 10.1. **merchandising;**
- 10.2. **companion materials;**
- 10.3. **soundtrack compilations;** or
- 10.4. **title.**

However, this exclusion does not apply to **merchandising, companion materials, soundtrack compilations** or **titles** that were disclosed in the **Named Insured's** application for insurance if coverage for such was accepted by the Insurer and is provided by Endorsement to this Policy and, with respect to **merchandising**, if the **Insured** has also obtained necessary rights for such **merchandising**;

11. based upon or arising out of colorization of any black and white film or media product;

12. based upon or arising out of any act, error or omission in connection with or related to any right, title or interest in any computer technology licensed, developed or created for or used on an internet website, including but not limited to copyright, trademark, collective mark, service mark or any other intellectual property right;

13. based upon or arising out of the use of:

- 13.1. websites other than those made in connection with the **insured production** and used solely for advertising and promotion of the **insured production**;
- 13.2. chatrooms, blogs or bulletin boards;
- 13.3. online games, contests or puzzles; or
- 13.4. any other public electronic forum;

unless coverage for such was approved by the Insurer and is provided by Endorsement to this Policy.

14. based upon or arising out of the use of Twitter, Facebook, LinkedIn or use of other social media platforms unless:

- 14.1. used in connection with the **insured production**; and
- 14.2. use of such platforms was identified in the **Named Insured's** application for insurance and accepted as covered by the Insurer.

15. based upon or arising out of any violation of any anti-trust law;

16. based upon, arising from or in any way related to any:

- 16.1. profits, fees, residuals, royalties or other monies alleged to be due to any artist, writer, composer, lyricist or contributor from the **Insured**; or
- 16.2. allegations by any artist, writer, composer, lyricist or contributor of excessive or unwarranted fees, compensation or other charges of any kind made by the **Insured**;

17. for punitive or exemplary damages or any **defense costs** related to or for punitive or exemplary damages;

18. for loss of revenue or profits;

19. based upon, arising out of or resulting from the rights in or uses of any literary, musical or other material:

- 19.1. owned or alleged to be owned; or
 - 19.2. supplied by or out of services provided by any:
 - 19.2.1. past or present employee, partner, joint venture, director or officer, including any successor in interest to such persons or organizations;
 - 19.2.2. predecessor in title; or
 - 19.2.3. **independent contractor**;
- of the **Insured**;

20. based upon, arising from or in any way related to a **pollution incident, asbestos products** or any exposure to any **nuclear risk**;

21. for production costs, advertising or print costs or other similar costs, except those otherwise covered under the Withdrawal Liability Insuring Agreement;

22. for loss of time sales or license fees of any kind; or

23. based upon, arising out of, or directly or indirectly resulting from the actual or alleged civil or foreign war, invasion, hostilities (whether war be declared or not), act of foreign enemy, rebellion, insurrection, revolution, military or usurped power, martial law or confiscation by order of any government or any public authority.

SECTION 3 – LIMITS OF LIABILITY AND DEDUCTIBLE

1. The Limits of Liability stated in the Declarations and the rules below fix the most the Insurer shall pay regardless of the number of **Insureds** or **claims** made or persons or organizations making **claims**:

- 1.1. subject to 1.2. below, the Limit of Liability stated as applicable to each **claim** shall be the Insurer's maximum liability for all **loss** arising out of any one **claim** and shall apply in excess of any applicable deductible stated in the Declarations;
- 1.2. the Aggregate Limit of Liability shall be the Insurer's maximum liability for all **claims** covered under this Policy.

2. If the **policy period** is extended, the additional period shall be deemed part of the last preceding period for purposes of determining the Limits of Liability.

3. If the Insurer has agreed to increase any limit of liability under this Policy or any prior policy issued by the Insurer (if this Policy forms part of a continuous series of renewals), such increase shall not apply to:

- 3.1. **claims** made before the effective date of the increase; and
- 3.2. any fact or circumstance known to the **Insured** on the effective date of the increase and likely to give rise to a **claim**.

4. If any limit of liability has been reduced, the reduced limit shall apply to all **claims** made to the Insurer after the effective date of the reduction, whether or not the **Insured** had prior knowledge of the **claim** or of any fact or circumstance likely to give rise to a **claim**.

5. Except where this Policy is governed by the insurance laws of the Province of Quebec, **defense costs** shall reduce and may exhaust the Limits of Liability stated in the Declarations and the deductible amounts stated in the Declarations apply to **defense costs**.

SECTION 4 – DEFENSE AND SETTLEMENT

1. The Insurer shall have the right and duty to defend the **Insured** against any **claim** covered under this Policy with a lawyer selected or appointed by the Insurer.

2. Except for Québec, the Insurer's right and duty to defend any **claim** or pay any **loss** shall end when the applicable limit of liability is exhausted by the payment of **defense costs**, judgements or settlements.
3. The **Insured** shall have the right, at the **Insured's** own expense, to participate in the defense. However, the **Insured's** participation in any defense shall not interfere with the Insurer's rights under this **SECTION 4 – DEFENSE AND SETTLEMENT**.
4. The Insurer shall have no duty to defend the **Insured** for any **claim** to which this Policy does not apply.
5. The Insurer has the right to refuse to prosecute an appeal of an adverse judgment or ruling or to refuse to pay any **defense costs** incurred in connection with any such appeal. The Insurer has no obligation to post any appeal bond.
6. Without the Insurer's prior written consent, the **Insured** shall not admit any liability, settle or attempt to settle any **claim**, incur any **defense costs**, or otherwise interfere in the defense of any **claim**, or assume any contractual obligation without the Insurer's consent.
7. The Insurer shall have the right to investigate any **claim** and negotiate the settlement thereof, as it deems expedient, but the Insurer shall not make any settlement without the consent of the **Insured** involved. If, however, the **Insured** shall refuse to provide consent the Insurer's liability for the **claim** shall be limited to the amount for which the **claim** could have been settled, including interest and **defense costs** incurred up to the date of such refusal.
8. If a conflict of interest arises which imposes a duty under applicable law on the Insurer to provide independent counsel to the **Insured**, the **Insured** will have the right to select the defense counsel, or consent to the Insurer's choice of lawyer, unless at the time the **Insured** is advised of such conflict, the **Insured** waives the right to such counsel, in writing. It is expressly understood that the Insurer shall pay fifty percent (50%) of the costs and fees for such independent counsel and the **Insured** shall pay fifty percent (50%) subject to the following:
 - 8.1. both the independent counsel selected by the **Insured** and the lawyer selected by the Insurer shall be allowed to participate in all aspects of the defense of the **claim**. Both lawyers shall cooperate fully in the exchange of information consistent with each counsel's ethical and legal obligation to the **Insured**. The lawyer selected by the Insurer shall be the lead counsel.
 - 8.2. independent counsel selected by the **Insured** shall have at least five (5) years of tort litigation practice that includes substantial defense experience in the subject matter of the **claim**. At the time of selection, such counsel shall provide, in writing, to the Insurer the particulars of such experience for the Insurer's approval.
 - 8.3. independent counsel selected by the **Insured** shall maintain professional errors and omissions insurance with appropriate deductibles, limits and other provisions taking into consideration, among other things, the amounts and exposures involved in the **claim**. Such insurance will be maintained during the entire period of the defense of the **claim** and a reasonable period thereafter, but not less than two (2) years, except in Quebec where such insurance shall be maintained three (3) years. The **Insured's** independent counsel will provide the Insurer with certificates evidencing such insurance upon selection and thereafter from time to time at the Insurer's request. Such insurance will provide the Insurer with thirty (30) days prior written notice of cancellation.
 - 8.4. the rates the Insurer will pay for its share of the **Insured's** independent counsel fees will be the independent counsel's regular rates for similar work, not to exceed, however, rates actually paid by the Insurer to lawyers retained by the Insurer in the ordinary course of business in defense of similar actions in the community where the **claim** arose and is being defended. Any dispute concerning the lawyer's fees not resolved in accordance with the above shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute.
 - 8.5. it is the **Insured's** duty and the duty of the **Insured's** independent counsel to disclose to the Insurer all information the **Insured** and its counsel have concerning the defense of the **claim**, except privileged matters pertaining to coverage disputes and to inform and consult with the Insurer and the Insurer's lawyer in a timely manner on all matters concerning the defense of the **claim**. Any **claim** of privilege is subject to in camera review by a court having jurisdiction of the litigation or any action regarding coverage. Any disclosure of information by the **Insured** or by the **Insured's** independent counsel to the Insurer's appointed lawyer shall not waive any privilege as to any other party.
 - 8.6. the **Insured** may waive its right to select independent counsel by signing a form stating the following or something substantially similar:
 - 8.6.1. I have been advised and informed of my right to select independent counsel to represent me in this lawsuit. I have considered this matter fully and freely waive my right to select independent counsel at this time. I authorize my insurer to select a defense lawyer to represent me in this lawsuit.
 - 8.7. in the event the **Insured** waives its right to select independent counsel, the lawyer selected by the Insurer will defend all **claims** but will not be obligated to, nor shall such counsel render any services or advice, either to the Insurer or to the **Insured** with respect to coverage under the Policy or any alleged conflicts of interest between the **Insured** and the Insurer or between one **Insured** and another **Insured**.
 - 8.8. if, in the Insurer's opinion, there are both covered and uncovered allegations, facts or relief sought in any **claim** and the lawyer selected by the Insurer is defending all such **claims**, all **defense costs** shall be allocated, to the extent reasonably possible, between covered and uncovered matters. The Insurer may, at its discretion, advance **defense costs** for both covered matters and uncovered matters, while any coverage issue remains unresolved, but such advances shall not be deemed a waiver of the Insurer's rights to recoup **defense costs** advanced on uncovered matters. The Insurer will have the right to waive, in writing, its benefits under this sub-paragraph 8.8.
 - 8.9. no conflict of interest between the **Insured** and the Insurer shall be deemed to exist as to allegations of punitive damages or be deemed to exist solely because the **Insured** is sued for an amount in excess of the Limit of Liability.
 - 8.10. no conflict of interest shall be deemed to exist as to allegations or facts of a **claim** for which the Insurer denies coverage.
 - 8.11. in the event the **Insured** fails to comply with any of the terms and conditions of this Policy, the Insurer's defense or settlement of any **claim** will not operate as a waiver by the Insurer of any rights the Insurer has by reason of such failure.

SECTION 5 – NOTICE OF CLAIMS

1. If any **claim** falling under the Communications and Personal Injury Liability Insuring Agreement is made against an **Insured**, as a condition precedent to its right to any coverage under this Policy, the **Insured** shall give the Insurer written notice of such **claim** as soon as practicable thereafter. Timely and sufficient notice by one **Insured** of a **claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **claim**. Such notice shall give full particulars of the **claim**, including: a description of the **claim**, wrongful act and **insured production**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or **damages** that resulted from such wrongful act; information on the time, place and nature of, and the manner in which the **Insured** first became aware of such wrongful act.
 If an **Insured** becomes aware of a wrongful act that may subsequently give rise to a **claim** under the Communications and Personal Injury Liability Insuring Agreement, the **Insured** shall give the Insurer written notice of such wrongful act as soon as practicable thereafter. Such notice shall include: a description of the wrongful act and **insured production**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or **damages** that resulted from such wrongful act; information on the time, place and nature of, and the manner in which the **Insured** first became aware of such wrongful act.
2. If any **claim** falling under the Withdrawal Liability Insuring Agreement is made against an **Insured**, as a condition precedent to its right to any coverage under this Policy, the **Insured** shall give the Insurer written notice of such **claim** as soon as practicable thereafter. Timely and sufficient notice by one **Insured** of a **claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **claim**. Such notice shall give full particulars of the **claim**, including: a description of the **claim**, written contract or agreement, withdrawal, **insured production** and temporary restraining order or injunction; the identity of all potential claimants and any **Insureds** involved; a description of the **withdrawal cost expenses** that resulted from such withdrawal; information on the time, place and nature of, and the manner in which the **Insured** first became aware of such temporary restraining order or injunction.
 If an **Insured** becomes aware of a withdrawal and temporary restraining order or injunction that may subsequently give rise to a **claim** under the Withdrawal Liability Insuring Agreement, the **Insured** shall give the Insurer written notice of such withdrawal and temporary restraining order or injunction as soon as practicable thereafter. Such notice shall include: a description of the written contract or agreement, withdrawal, **insured production** and temporary restraining order or injunction; the identity of all potential

claimants and any **Insureds** involved; a description of the **withdrawal cost expenses** that resulted from such withdrawal; information on the time, place and nature of, and the manner in which the **Insured** first became aware of such temporary restraining order or injunction.

3. If any **claim** falling under the Exhibitor Liability Insuring Agreement is made against an **Insured**, as a condition precedent to its right to any coverage under this Policy, the **Insured** shall give the Insurer written notice of such **claim** as soon as practicable thereafter. Timely and sufficient notice by one **Insured** of a **claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **claim**. Such notice shall give full particulars of the **claim**, including: a description of the **claim**, the **Insured's** contract or agreement to pay and hold harmless the exhibitor and the exhibitor's distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or **damages** that resulted from such distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**; information on the time, place and nature of, and the manner in which the **Insured** first became aware that a claimant was complaining about such distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**.

If an **Insured** becomes aware of a wrongful act that may subsequently give rise to a **claim** under the Exhibitor Liability Insuring Agreement, the **Insured** shall give the Insurer written notice of such wrongful act as soon as practicable thereafter. Such notice shall include: a description of the **Insured's** contract or agreement to pay and hold harmless the exhibitor and the exhibitor's distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or **damages** that resulted from such distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**; information on the time, place and nature of, and the manner in which the **Insured** first became aware that a claimant was complaining about such distribution, advertising, publicizing, exhibition or broadcasting of the **insured production**.

4. **Claims** arising out of the same or related circumstances shall be considered a single **claim** and shall apply against the **policy period** during which the first of such **claims** was made.

SECTION 6 – SUPPLEMENTAL PAYMENTS

1. The Insurer will pay the following in addition to the Limits of Liability:
 - 1.1. the cost of appeal or bonds to release attachments. But the Insurer will only pay such costs for bond amounts to which the Policy's Limits of Liability apply. The insurer has no obligation to furnish such bonds;
 - 1.2. costs assessed or awarded against the **Insured** in a civil action;
 - 1.3. pre-judgement interest that accumulates on that covered part of a judgement awarded against the **Insured** prior to it being awarded. The Insurer will also pay interest that accumulates on a full judgement for which the Insurer makes payment. However, such payment will only be for the interest from the date of judgement to the date the Insurer pays, offers to pay or deposit in court the payment amount that applies to that judgement;
 - 1.4. all expenses incurred by the Insurer;
 - 1.5. the reasonable expenses incurred by any **Insured** at the Insurer's request to help the Insurer investigate, settle or defend a **claim**. The most the Insurer will pay for earnings actually lost by an **Insured** because of time taken off from work is \$250 per day;

these payments will not reduce the Limit of Liability.

SECTION 7 – CLEARANCE PROCEDURES

1. The **Insured** agrees to follow all of the Insurer's clearance procedures in connection with the acquisition, creation, exhibition, broadcast, dissemination, internet exploitation, production, publication, distribution, licensing, advertising or publicizing of the **Insured's** production and will use all reasonable efforts to obtain from third parties for whom the **Insured** obtains material and services, written indemnification against **claims** resulting from the use of such materials and services. If the **Insured** uses reasonable care to observe the Insurer's clearance procedures, any inadvertent failure on the **Insured's** part to do so will not relieve the Insurer of liability. At the Insurer's request, the **Insured** will furnish the Insurer copies of the **Insured's** clearance procedures.
2. The Insurer's clearance procedures require the **Insured** to take all 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's** production and to avoid including in the **insured's** production libelous material or material constituting a violation of any right of privacy or publicity.
3. The **Insured** agrees to allow lawyers satisfactory to the Insurer to supervise and approve the **Insured's** compliance with all clearance procedures.

SECTION 8 – COOPERATION

1. The **Insured** shall, at the **Insured's** own expense, cooperate with the Insurer in the defense of any **claim** covered or alleged to be covered by this agreement. Such cooperation includes:
 - 1.1. aiding in securing, compiling, summarizing and analyzing evidence and information necessary to defend the **claim**;
 - 1.2. obtaining the attendance of witnesses and attending hearings and trials;
 - 1.3. assisting in effecting settlement and executing any and all documents the Insurer may reasonably require in connection with the defense or disposition of any **claim** and in the prosecution of appeals;
 - 1.4. the **Insured** shall not make any admission of liability either before or after an occurrence that pertains to any **claim** or any potential **claim**;
 - 1.5. if, prior to the first or any subsequent exhibition, release, distribution or broadcast of an **insured production**, the **Insured** receives a notice of a **claim**, or notice of a potential **claim**, the **Insured** must notify the Insurer. The **Insured** must also send a written report to the Insurer stating that the **Insured** has thoroughly investigated the **claim** and provide the reason why the **Insured** feels it is baseless or, if the **Insured** is unclear about the merits of the **claim**, the **Insured** will consult with the Insurer before proceeding with any exhibition, release, distribution or rebroadcast;
 - 1.6. the **Insured** will take necessary steps to protect the **Insured's** and the Insurer's interests and to eliminate, mitigate or minimize the **loss** resulting from any **claim**, as the **Insured** would if this insurance did not exist. This includes making any retractions and corrections to, or in connection with, an **insured production** requested by the Insurer. The cost of corrections shall be shared by the **Insured** and the Insurer as outlined below. The requirements of this sub-paragraph 1.6. shall include the withdrawal from distribution, exhibition, release or broadcast of the alleged infringing **insured production**, subject to the following:
 - 1.6.1. after a **claim** has been reported to the Insurer, the Insurer can request the **Insured** to withdraw from distribution, exhibition, release or broadcast the **insured production**. If the **Insured** refuses to withdraw the **insured production**, the Insurer's obligation for all **loss** resulting from a **claim** is limited to one-half (1/2) of all covered **loss** incurred after the date the **Insured** refused to make the withdrawal;

- 1.6.2. all decisions by the **Insured** or the Insurer about any withdrawal must be exercised in good faith and with reasonable justification based upon individual evaluation of the **claim** in dispute.

SECTION 9 – GENERAL CONDITIONS

1. POLICY CHANGES

This Policy contains all the agreements between the **Named Insured** and the Insurer concerning the insurance afforded. The terms of this Policy shall not be waived or changed, except by Endorsement issued by the Insurer and made a part of this Policy.

2. DECLARATIONS

- 2.1. By acceptance of this Policy, the person who signed the application agrees:
- 2.1.1. that the statements in the application and the Declarations are accurate and complete and are based upon representations he/she made to the Insurer;
- 2.1.2. that this Policy has been issued in reliance upon such representations.
- 2.2. Any misrepresentation or concealment by the person who signed the application of any facts known to him or her which are likely to materially influence a reasonable insurer in the setting of the premium, the appraisal of the risk or the decision to accept it shall void the Policy at the instance of the Insurer, even in respect of **claims** not connected with the risk so misrepresented or concealed.
- 2.3. Unless the bad faith of the person who signed the application is established or unless it is established that the Insurer would not have accepted the risk if it had known the true facts, the Insurer shall remain liable towards the **Insured** for such proportion of the indemnity as the premium it collected bears to the premium it should have collected.

3. NOTICE

Notices by the **Insured** to the Insurer shall be mailed to the address shown in the Declarations.

Notices by the Insurer to the **Insured** shall be mailed to the **Named Insured** at the address shown in the Declarations or any other address notified in writing to the Insurer.

4. SEPARATION OF INSURED

Except with respect to the Limits of Liability and any rights or duties specifically assigned to the **Named Insured**, this insurance shall apply in the same manner and to the same extent as if a separate policy had been issued to each **Insured**.

5. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurer unless its consent thereto is given in writing.

6. CANCELLATION

- 6.1. The first **Named Insured** shown in the Declarations may cancel this Policy by mailing or delivering to the Insurer written notice stating when thereafter the cancellation shall be effective. If no date is specified, cancellation shall be effective upon receipt of the notice.
- 6.2. The Insurer may cancel this Policy by giving to the **Named Insured**, at the last mailing address known to it, written notice of cancellation by registered or certified mail or personally delivered at least:
- 6.2.1. fifteen (15) days before the effective date of cancellation if cancellation is effected for non-payment of premium; or
- 6.2.2. thirty (30) days before the effective date of cancellation if cancellation is effected for any other reason.
- Except in Quebec, if notice is mailed, cancellation takes effect fifteen (15) or thirty (30) days after receipt of the letter by the post office to which it is addressed, depending upon the reason for cancellation. Proof of mailing will be sufficient proof of notice. In Quebec, cancellation takes effect either fifteen (15) or thirty (30) days after receipt of the notice at the last known address of the first **Named Insured**, depending upon the reason for cancellation.
- 6.3. Subject to the minimum premiums in the event of cancellation, if this Policy is cancelled, the Insurer shall send the first **Named Insured** any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first **Named Insured** cancels, the refund shall be computed in accordance with the Insurer's short rate table. The cancellation shall be effective even if the Insurer has not made or offered a refund:
- 6.3.1. if cancellation occurs before the first exhibition or broadcast of the **insured production**, the minimum earned premium shall be 50% of the premium shown in the Declarations; or
- 6.3.2. if cancellation occurs after the first exhibition or broadcast of the **insured production**, the minimum earned premium shall be 100% of the premium shown in the Declarations.

7. PAYMENT OF PREMIUM

The first **Named Insured** shall be responsible for the payment of all premiums and shall be the payee for any return premiums payable by the Insurer.

8. OTHER INSURANCE

- 8.1. If the **Insured** has other valid insurance against **damages** or **withdrawal cost or expenses** covered by this Policy, except an insurance policy issued by a subsidiary of the parent company of the Insurer, then this Policy shall be excess over such other insurance, unless such other insurance is written only as specific excess insurance, in which case this Policy shall be primary.
- 8.2. If the **Insured** has other valid insurance against **damages** or **withdrawal cost or expenses** covered by this Policy, under a policy issued by a subsidiary of the parent company of the Insurer, the policy that applies most specifically to the **claim** shall be primary and the other insurance shall be excess. The Insurer's liability for any one **claim**, however, shall in no event exceed the highest limit of liability applicable to the **claim** under all policies.

9. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery therefore against any person or organization. The Insurer may be fully or partly released from its obligation towards the **Insured** where, owing to any act of the **Insured**, it cannot be so subrogated.

10. CURRENCY

All limits of liability, premiums, deductibles and other amounts as expressed in this Policy are in Canadian currency, unless expressly indicated otherwise on the Declarations. If judgment is rendered or if a settlement is denominated in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars, unless expressly indicated otherwise on the Declarations. The rate of exchange shall be the rate in force on the date the final judgment is rendered or the date the amount of the settlement is agreed upon and, with respect to the payment of the premium, the rate in force on the date of billing.

11. BANKRUPTCY AND INSOLVENCY

Bankruptcy or insolvency of the **Insured** shall not relieve the Insurer of its obligations under this Policy.

12. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy.

13. RIGHT OF AUDIT

The Insurer may examine and audit the **Insured's** books and records at any time during the **policy period** and within three (3) years after the termination of this Policy, as far as they relate to the subject matter of this insurance.

14. POLICY TERRITORY

This insurance shall apply anywhere in the world.

15. SANCTIONS OR EMBARGOES

This Policy does not cover **claims** or provide any coverage or benefit if providing coverage for any **claim** would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under the United Nations resolutions or the trade economic sanctions, laws or regulations including Canada, the United States of America, The European Union or the United Kingdom.

16. REIMBURSEMENT

If the Insurer has paid any amount in settlement or satisfaction of **claims, defense costs** (except for Québec) or judgements in excess of the applicable limit of liability or within the amount of the applicable deductible, the **Named Insured** shall be liable to the Insurer for any and all such amounts and, upon demand, shall pay such amounts to the Insurer immediately.

SECTION 10 – DEFINITIONS

1. **Asbestos products** means any property, building, goods or products composed, containing, damaged, contaminated or otherwise affected by, in whole or in part, any asbestos or asbestos related material, regardless of whether such goods or products are manufactured, sold, handled, maintained, repaired, removed, disposed of, transported, distributed, installed by, or in any way connected with, the **Insured** or any other person or organization trading under the **Insured's** name.
2. **Bankruptcy** means the legal status of the **Insured** at the time or date of the granting of a receiving order against **Insured**, the filing of an assignment of property by or in respect of the **Insured** or the event that causes an assignment by the **Insured** to be deemed.

3. **Bodily injury** means bodily injury, sickness or disease, death, mental anguish or emotional distress.

4. **Claim** means:

- 4.1. a verbal or written demand in which **damages** or non-monetary relief is alleged or sought;
- 4.2. a written demand for **withdrawal costs or expenses**;
- 4.3. any civil proceeding commenced by the service of a Notice of Action, Notice of Application, Statement of Claim, Complaint or any other similar proceeding in which **damages** are sought; or
- 4.4. any arbitration, mediation or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with the Insurer's written consent.

However, **claim** does not include any criminal, quasi-criminal or regulatory or statutory proceeding.

5. **Companion materials** includes but is not limited to "making of" documentaries, video games or any other new media product such as webisodes, mobisodes, mobile television products, ring or voice tones, screen savers, wallpaper or any other representation of characters, story lines or other elements of the **insured production**.

6. **Damages:**

- 6.1. means any compensatory monetary damages the **Insured** is legally obligated to pay as a result of a **claim** covered by this Policy, including, actual damages, statutory damages and post-judgment interest.
- 6.2. shall not include:
 - 6.2.1. any fine, tax, fee, forfeiture, penalty or sanction;
 - 6.2.2. any non-monetary or equitable relief or redress, including but not limited to any cost or expense of complying with any injunctive, declaratory or administrative relief or specific performance award;
 - 6.2.3. any payment, restitution, return or disgorgement of sums the **Insured** is not legally entitled to;
 - 6.2.4. any return, reduction, offset or lack of payment or receipt of any fees, compensation or other payment owed, paid, or to be paid to an **Insured**; or
 - 6.2.5. any matter that is uninsurable under applicable law.

7. **Defense costs:**

- 7.1. means:
 - 7.1.1. reasonable and necessary legal fees, costs and expenses incurred by a lawyer, selected or appointed by the Insurer or by an **Insured** with the Insurer's prior written consent, in the investigation, settlement or defense of a **claim**;
 - 7.1.2. other fees, costs and charges resulting from the investigation, adjustment, defense and appeal of a **claim**, including premiums on appeal bonds, that are incurred by the Insurer or with the Insurer's written consent. Provided that, the Insurer will not be obligated to apply for or furnish any such appeal bond.
- 7.2. shall not include:
 - 7.2.1. remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **Insured**;
 - 7.2.2. salaries or expenses of the Insurer's employees other than fees, costs or expenses incurred by a lawyer retained by the Insurer to defend a particular **claim**; or
 - 7.2.3. fees, costs or expenses of any independent adjuster hired by the Insurer to investigate a particular **claim**.

8. **Independent contractor:**

- 8.1. means an individual or entity who provides informational content or services to an **insured production** pursuant to a written contract or agreement with the **Named Insured** or any **subsidiary**, including any writer, director, photographer or production company.
- 8.2. shall not include any licensor whose content was not created for the **insured production**, but whose content was licensed by the **Named Insured** or a **subsidiary**.

9. **Insolvency** means the financial position of the **Insured** as a debtor as that term is defined and used within the provisions of the *Bankruptcy and Insolvency Act* R.S. (1985), c. B-3. Without limiting the generality of the foregoing, the **insolvency** shall occur when any receiver, conservator, liquidator, trustee, sequestrator, court or similar provincial or federal official or a creditor takes control of, supervises, manages or liquidates the **Insured**.

10. **Insured** means:

- 10.1. the **Named Insured** and any **subsidiary**;
- 10.2. the parent organization of the **Named Insured**;
- 10.3. any person who was, is or becomes a director, officer, trustee, shareholder, principal, member, partner or employee of the **Named Insured** or any subsidiary but only for acts committed within the capacity and scope of such person's duties as such;
- 10.4. the **loan-out corporation** of any person identified in sub-paragraph 10.3. above, but only for services provided to or related to the **insured production**; and

- 10.5. the agent, leased or temporary employee, volunteer or **independent contractor** who provides services to the **insured production** on behalf of the **Named Insured** or any **subsidiary**, but only for acts committed within the capacity and scope of such individual's duties for services provided to the **insured production** on behalf of the **Named Insured** or any **subsidiary**;
- 10.6. any **subsidiary** acquired by the **Named Insured** during the **policy period** if the **Named Insured** notifies the Insurer within 90 days following the acquisition by the **Named Insured**. The **Named Insured** shall pay any additional premium required because of the application of insurance to such acquisition.
11. **Insured production** means the specific production referred to on the application of insurance submitted to the Insurer for clearance and approved by the Insurer and shown in the Declarations. No other productions are covered by this insurance unless a separate application for any such production has been signed by the **Named Insured**, approved by the Insurer and such approved production has been added to this insurance by Endorsement. The Insurer will consider a series of episodes for television, cable or other release to be one **insured production**.
12. **Loan-out corporation** means a corporation, partnership or joint venture which provides the services of its employees to the **insured production**.
13. **Loss** means all **damages, defense costs and withdrawal costs or expenses**.
14. **Merchandising** means the use or licensing, and related promotion, by the **Insured** of property rights relating to and arising from the **insured production** in connection with the sale of goods or services including, but not limited to, books, toys, board games or other physical representations of characters, objects or other elements of the **insured production**, or any transformation of any element of the **insured production** other than as originally released.
15. **Named Insured** means the person or entity described in the Declarations of this Policy.
16. **Nuclear risk** means any activity, material or operations subject to the *Nuclear Energy Act R.S.C., 1985* or the *Nuclear Safety and Control Act AC 1997*.
17. **Piracy** means the wrongful use, reprinting or reproduction of copyrighted material.
18. **Policy period** means the period from the Inception Date of this Policy stated in the Declarations to the Expiration Date of this Policy stated in the Declarations or to any earlier cancellation or termination of this Policy.
19. **Pollution incident** means the discharge, dispersal, release or escape or seepage of smoke, vapors, soot, fumes, acids, alkalis, toxic substances, waste materials, oil, petroleum substance or derivatives (including any oil, refuse or oil mixed with waste), or other irritants, contaminants, or pollutants, into or upon land, the atmosphere, or any watercourse or body of water, bog marsh, swamp or wet land, and including but not limited to the ground water, the subsoil or anything contained therein, whether the **Insured** is alleged to be an actual polluter or not.
20. **Prior and pending proceedings date** means the Inception Date of this Policy (or the first policy issued by the Insurer if this policy forms part of a continuous series of renewals.)
21. **Property damage** means:
- 21.1. physical injury to or destruction of tangible or intangible property, including its loss of use; or
 - 21.2. loss of use of tangible or intangible property that has not been otherwise physically injured or destroyed.
22. **Soundtrack compilations** includes, but is not limited to CD's, cassettes, online and other musical productions.
23. **Subsidiary** means any entity in existence on the Inception Date of this Policy in which the **Named Insured** owns, directly or through one or more **subsidiaries**, greater than fifty percent (50%) of the issued or outstanding voting securities.
24. **Title** means the caption or name of the **insured production** shown in the Declarations or added by Endorsement but not the **insured production** itself or any goods or products related to the **insured production** or packaging of any such goods or products.
25. **Withdrawal costs or expenses**:
- 25.1. means:
 - 25.1.1. advertising, promotional and exploitation costs and expenses, but only to the extent that the value of such materials is destroyed and/or reduced as a result of the temporary restraining order or injunction; and
 - 25.1.2. manufacture release print costs, tape costs or cost for other copies.
 - 25.2. does not include loss of revenues, profits, inventory in process or on hand, network license fees, time sales revenue loss or production loss resulting from any such withdrawal