



# Producers Liability Insurance Policy Wording

## Contract of Insurance and Insurance Agreement

This Policy forms part of Your contract of insurance. Your contract of insurance consists of:

1. This Policy document; and
2. The Schedule which details the cover applying to You and which may be updated from time to time. The Schedule will include any changes to the standard cover described in this Policy; and
3. Your proposal or application form including any written or oral statements or documents made or supplied by You; and
4. Any endorsements added either by way of Schedule or otherwise.

Under this contract of insurance You, as the Insured party, agree to pay the premium(s) stated in the Schedule and Western Pacific Insurance Limited (WPIL) agrees to provide the insurance cover set out in this Policy and according to this contract of insurance.

Some terms used in this Policy have specific meanings. Where words begin with an upper case letter the meaning of those words or terms are set out in the definitions section of this Policy document.

Defined words include any plurals or other derivatives of those words or terms as the context requires.

Headings are used for reference only and are not part of the Policy for interpretation purposes.

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## What is covered by this Contract of Insurance

1. WPIL covers any sums which the Insured shall become legally obligated to pay as compensatory damages by reason of any act, error or omission out of which any Claim is made against the Insured by reason of:
  - a. Invasion or infringement of or interference with the right of privacy or publicity, whether under common law or statutory law;
  - b. Infringement of copyright or trademark, whether under statutory law or common law;
  - c. Libel, slander or other forms of defamation;
  - d. Unauthorised use of titles, formats, ideas, characters, plots, performances of artists or other performers, or other program material embodied in the Insured Production, but only for Claims based upon allegations of plagiarism, unfair competition, piracy, infringement of copyright or violation of common law property rights in literary or musical materials; or
  - e. Breach of contract limited to those which are implied in fact or in law, resulting from the alleged submission of program, musical or literacy materials used by the Insured in the Insured Production.

But only where such act, error or omission by the Insured:

- a. has been committed or alleged to have been committed in the business of the Insured in connection with the creation, production, distribution, exhibition, broadcasting, Advertising or Publicising of the Insured Production designated to or otherwise endorsed onto this Policy; and
- b. occurs during the Period of Insurance and Claim is first made against and communicated to the Insured during the Period of Insurance or prior to the Period of Insurance provided that prior to the effective date of this Policy the Insured did not give notice to any prior insurer of such act, error or omission and the Insured had no knowledge of such act, error or omission, nor could have reasonably foreseen any circumstances likely to give rise to a Claim under this Policy and claim is first made against and communicated to the Insured during the Period of Insurance;

Written notice if such Claim must be first delivered to WPIL by the Insured during the Period of Insurance or within sixty days after termination of the Period of Insurance.

If WPIL cancels or refuses to renew this Policy, the Claim reporting period, but not the terms of this Policy, shall be extended for any Claim made within 36 months after such cancellation or non-renewal, for any act, error, or omission occurring during the terms of this Policy, it being understood that such extension shall not apply in the event of any of the following:

- a. the Insured has not fully paid all Policy premiums;
- b. the Insured had obtained a subsequent Claims made Policy or an occurrence Policy with prior acts coverage;
- c. the Insured cancels prior to the expiration of this Policy.

If the Insured does not renew at expiration, the Insured shall have the right within thirty (30) days following the expiration of the Period of Insurance, and upon payment of any and all Policy premiums then due plus an additional premium of 15% of the total final premiums of this Policy, to an extension of the Claims reporting period for a term of 36 months, but only with respect to Claims arising out of any act, error or omission that occurred during the terms of this Policy. Any extension of this Policy as detailed above, shall be only for the purpose of Claim reporting and not for the purpose of extending the Policy term.

2. Subject to Clauses 29 – 35 (inclusive) of the section headed "Other Important Information And Terms", WPIL will defend on behalf of and in the name of the Insured any Claim made to recover damages or injunctive relief, or both, by reason of any of the matters as to which WPIL is obligated to indemnify the Insured under this Policy, even if such Claim is groundless, false or fraudulent.
3. WPIL will pay for any sums which the Insured shall become legally obligated to pay as damages:
  - a. on behalf of any Exhibitor; and
  - b. for which Liability is imposed upon the Insured by any written, oral, or implied agreement with any Exhibitor in which the Insured agrees to indemnify and hold harmless any Exhibitor against Liability from any third parties for damages incurred by such third party as a result of the distribution,



Advertising, Publicising, Exhibitions or radio or television broadcasting or any Insured Productions and only as to the matters specifically stated in Clause 1 above together with all other provisions of this Policy.

This Policy shall not cover any Liability assumed by the Insured for any Claim arising or alleged to arise out of the negligence, breach of contract, willful act or failure to act by any Exhibitor, or for any other changes made in the Insured Productions by the Exhibitor

4. WPIL shall defend the Insured against any demand for injunctive relief as detailed in Clause 2 above, but this Policy shall not cover any loss or liability of the Insured or of any Exhibitor, identified in Clause 3 above, assignee of the Insured, or any other party, for any production costs, loss of revenues or profit, inventory in process or on hand, contract obligations or loss of value or Advertising or Publicity, network license fees or time sales revenues, should any Insured Productions be withdrawn from manufacturer, distribution or exhibition.
5. WPIL shall not be obligated to make further payment on any Claim after the applicable Limit of Liability as provided in this Policy has been exhausted by payments under Clauses 1 to 4 (inclusive) above.
6. Subject to the applicable Limit of Liability, WPIL will pay:
  - a. All costs and expenses, including solicitors fees, incurred by WPIL in investigating, defending, settling or otherwise handling any Claim under this Policy, costs taxed against the Insured in any legal proceeding, and all interest on that part of any judgment, including prejudgment interests, entered on a Claim covered under this Policy which does not exceed this applicable Limit of Liability and which accrues after entry of judgment and before WPIL has paid or deposited or tendered in court that part of the judgment: and
  - b. Premiums on appeal bonds required in any legal proceeding and premiums on bond to release attachments or injunctions provided the bond amount is not in excess of the remaining balance of the applicable Limit of Liability of this Policy, but without any obligation of the part of WPIL to apply for or furnish any such bond.

## Claims and What Will Be Paid

1. If You make a claim under this Policy, part of that claim must be paid by You (the "Deductible" or "Excess"). The Excess is detailed in the Schedule, or may be detailed in the provisions of this Policy detailing specific types of cover, and will be deducted from any amount payable by WPIL under this Policy.
2. If anything happens or an Event occurs which may result in a claim being made on this Policy, then as soon as You know about that Event You must:
  - a. Do as much as You can to minimise any Loss or Liability and prevent further damage, Loss or Liability;
  - b. Tell WPIL immediately;
  - c. Do as much as You can to obtain details of any other persons, property, party or any other item involved and also any witnesses involved;
  - d. Tell WPIL immediately if any information or assistance is asked for or any communication or documentation is received by You.
3. Unless WPIL agrees You must not:
  - a. Incur any cost or expense in connection with the claim;
  - b. Dispose of any item or property which is part of the claim;
  - c. Start repairs or replace any item unless necessary to minimise the Loss or prevent further Loss as detailed above;
  - d. Negotiate or pay or settle or admit or deny any claim or admit any liability or guilt;
  - e. Start any legal proceedings;
  - f. Pass or abandon any item of property to WPIL or any other party unless agreed to by WPIL;
  - g. Do anything which may prejudice WPIL's ability to defend a claim made against You or to recover any part of any Loss from any person or party responsible.



4. If WPIL so requires You must:

- a. Authorise any other party to provide personal information about You in connection with Your claim to us;
- b. Complete any claim form and return it to WPIL within any period requested;
- c. Allow WPIL to inspect the property involved in any claim;
- d. Provide a statutory declaration to confirm the Loss or Liability claimed and submit to cross-examination under oath if WPIL so requires;
- e. Provide any information or help as WPIL may reasonably require to support the claim.

5. If WPIL accepts a claim, WPIL is entitled to act in Your name and on Your behalf in relation to that claim at our cost. WPIL can also retain any property that WPIL have paid a claim for or dispose of it and be entitled to keep the proceeds of any sale. WPIL is also entitled to take over any legal rights You may have in relation to the recovery under this Policy for Your Loss and is able to exercise such rights for WPIL's benefit. Any such action or exercising of legal right will be at WPIL's cost including any amount payable to You but You must agree to assist if WPIL reasonably requires it and provide any information WPIL reasonably requests.

**Maximum amount payable / Limit of liability**

The Limit of Liability for each and aggregate Claim stated in the Schedule or any applicable endorsements is the limit of WPIL's liability, in excess of the Deductible, with respect to any Claim during the Period of Insurance including any extensions or discovery period. The aggregate Limit of Liability stated in the Schedule, Declaration or any applicable Endorsements is the total limit of WPIL's liability for any and all Claims during the Period of Insurance, including any extensions or discovery periods, for any and all Claims arising out of an Insured Production.

If more than one Insured Production is shown in the Schedule or endorsed onto this Policy, the Limit of Liability and Deductible shall apply separately to each Insured Production.

For the purposes of determining and applying this Limit of Liability and Deductible, a series of episodes for television, cable or other release shall be considered one Insured Production.

The Limits of Liability stated in the Declarations shall not increase even if a Claim is made against more than one Insured.

The Limits of Liability shall include all amounts payable on behalf of the Insured, under Clauses 1 to 5 (inclusive) of the Section headed "What Is Covered by This Contract of Insurance", including Defence Costs.

The Deductible stated in the Schedule or Declarations shall be borne by the Insured and not otherwise covered by this insurance and shall apply separately to each Claim. The Deductible shall apply to all amounts payable as damages in settlement of a Claim, under Clauses 1 to 5 (inclusive) of the Section headed "What Is Covered by This Contract of Insurance", including Defence Costs.

**Excess / Deductible**

The Excess detailed in the Schedule or Declarations will be deducted from the amount of the Loss for each Claim except where a different Excess figure (including a nil Excess) is detailed elsewhere in this Policy wording.

**What is not covered by this Contract of Insurance**

**This Policy does not cover liability for, and WPIL shall have no obligation to investigate or defend, any Claim for or arising out of:**

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 Clauses 1 e and 3 in the section headed "What is covered by this Contract of Insurance".
2. Any Claim by any writer, composer, lyricist, artist or other party under contract with the Insured, or their heirs or assigns, seeking against the Insured any accounting or recovery of profits, royalties, fees or other monies alleged to be due from the Insured or any Claim by any such party against the Insured alleging excessive or unwanted fees, compensation or other charges of any kind made by the Insured.



3. Any infringement of patent or breach of fiduciary relationship or violation of any anti-trust laws.
4. Any Claim arising out of rights in or uses of any literary, musical or other materials supplied by, or out of any services rendered by, 1 any past or present employee, partner, joint venture, officer or director of the Insured or any successor-in-interest to any of the foregoing; 2 any predecessor in title of the Insured; or 3 any independent contractor of the Insured.
5. Any violation of any criminal law, statute or ordinance or any criminal governmental or civil penalties or fines; or cancellation, revocation or suspension of license by any governmental agency.
6. Based upon, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
  - a. Bodily injury, sickness, disease, emotional distress or death of any person; or
  - b. Destruction of any tangible property including loss of use thereof.
7. Any loss of production costs, revenues, profits, network license fees or time sales, license fees of any kind, inventory in process or on hand, contract obligations, Advertising or print costs, or other costs, or any loss or liability whatsoever, except Defence Costs arising out of the issuance of a temporary restraining order or injunction.
8. The title of any Insured Production until a satisfactory Title Report is submitted to and approved by WPIL and endorsed onto this Policy.
9. Merchandising, unless specifically endorsed onto this Policy.
10. The "colorisation" of any "black-and-white" film product, unless endorsed onto this Policy.
11. Any multiplication of amounts payable under this Policy, imposed by law.
12. Any dishonest, fraudulent or malicious act or failure to act.
13. Punitive or exemplary damages.
14. WPIL does not cover Loss caused by any act of terrorism, which means an act including but not limited to the use of force or violence or the threat of force or violence of any person or groups of persons whether acting alone or on behalf of or in connection with any organization or government which, by its nature or context, is done for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including with the intention to influence any government or to put fear into the public or any section of the public.
15. WPIL does not cover Loss arising from nuclear weapons, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste which results from the combustion (including self-sustaining process of nuclear fission) of nuclear fuel or the use or handling of radioactive material including the use of nuclear reactors, particles accelerators or generators, the transportation of radioactive material or any other use handling or transportation of any weapon or expose of device that employs nuclear fission or fusion.
16. WPIL does not cover Loss arising from war, invasion, act of foreign power, war-like operations, whether war has been declared or not.
17. WPIL does not cover Loss arising from civil war, rebellion, revolution, insurrection, military or usurped power.
18. WPIL does not cover Loss arising from any confiscation, acquisition, Loss or damage by order of any government, local body or authority.

## Other important information and terms

### Disclosure

1. When applying for insurance, You have a general legal duty of disclosure. You must tell WPIL everything that may be relevant to WPIL's decision to issue, renew or alter this contract of insurance. All statements and representations must be true and correct. All benefits under this Policy will be forfeited if any claim under this Policy is in any respect fraudulent.



2. If You are not sure whether to disclose a fact to WPIL, You should discuss the situation with WPIL or your broker.

#### **Breach of Terms**

3. No claim will be payable under this Policy if any person entitled to any benefit under the Policy breaches any of the terms and conditions set out in this contract of insurance.

#### **Change of Circumstances**

4. You must advise WPIL of any change of circumstances relevant to the Policy as soon as You are aware of the change of circumstances and any such information which may effect WPIL's decision whether or not to provide or renew insurance to You and on what terms.
5. A change of circumstance includes, but is not limited to, Yourself or any person entitled to a benefit under this Policy committing, being charged with or convicted of any criminal offence but not including traffic offences or any other matter which may increase the risk insured by this Policy or alter the risk insured by this Policy.

#### **Reasonable Care**

6. You must ensure that You take all reasonable steps to prevent Loss and avoid circumstances which may result in a claim.

#### **Governing Law**

7. This Policy and the contract of insurance are governed by the laws of New Zealand. Any dispute in relation to the contract of insurance can only be determined by the courts of New Zealand.

The terms and conditions of this Policy are always subject to the provisions of the Insurance Law Reform Act 1977 and the Insurance Law Reform Act 1985 including Your rights contained in those two Acts.

#### **Payment of Premium**

8. Unless specifically agreed by WPIL in the Schedule, it is acknowledged by You that no cover shall be provided under this contract of insurance until any premium is paid by You to WPIL or an agent nominated by WPIL.

#### **Premium Adjustments**

9. Where a premium for this policy has been calculated using estimated figures, then that premium is a provisional premium only for the applicable Twelve Month Period.
10. Within 3 months of the expiry of the applicable Twelve Month Period, You must tell WPIL what the actual figures are. WPIL will re-calculate the actual premium and any increase in premium will be payable by you.

#### **Other Insurance**

11. It is agreed that in the event of there being specific or other insurance, whether prior or subsequent to this Policy, directly or indirectly covering or insuring the risks Insured in this Policy, then such other insurance shall first apply and this Policy shall not be considered as contributing with such other insurance but shall pay only the difference between the amount recoverable under such other insurance and the amount of any loss covered under this Policy, not exceeding the Limit of Liability stated in this Policy. Other insurance in excess of the Limit of Liability of this Policy is permitted.

#### **Secured Parties**

12. No security holder is covered by this policy unless WPIL acknowledges this in writing or as detailed in the Schedule to this Policy.
13. Payment by WPIL to a party holding a security interest over the property (as advised in writing by You) will meet all of WPIL's obligations under this policy for the Loss.
14. WPIL is authorised to disclose Your personal information to any holder of a financial security over the property.

#### **Notices**

15. Any notice or disclosure to be given to WPIL by You under this policy must be given in writing to either our head office or our approved agent.
16. Notice by WPIL to You under this policy will be given by delivery in person or posted to the last postal address advised to WPIL by You.



### Joint Insured Parties

17. If You or The Insured as detailed in the Schedule is more than one individual then You are each jointly insured and any breach by one individual of those joint persons shall be taken as being a breach by all of them.
18. Payment under this contract of insurance to any party named in the Schedule shall constitute settlement of all of our obligations under this contract of insurance for any such claim.

### Amendment

19. This Policy, the Declarations and any endorsements, and the representations made in the Insured's Application, constitute the entire agreement and understanding of the parties and shall not be modified except in an instrument in writing signed by an authorised representative of WPIL.

### Assignment

20. No assignment of interest under this Policy shall be effective except when made by written Endorsement to this Policy and signed by an authorised representative of WPIL.

### GST

21. Any amount to be paid under a claim shall exclude New Zealand GST only if WPIL can recover the GST amount. Otherwise any other amount mentioned in this Policy shall include GST.

### Audit

22. WPIL may examine and audit the Insured's books and records as they relate to the subject matter of this Policy at any time during the Period of Insurance and within three years after the final termination of this Policy.

### Cancellation

23. This Policy may be cancelled by the Insured by mailing to WPIL written notice stating when thereafter cancellation shall be effective. This Policy may be cancelled by WPIL by mailing or delivering to the Insured, at the address shown in this Policy, written notice stating when not less than thirty (30) days thereafter cancellation shall be effective, except that ten (10) days' written notice will be given by WPIL when cancellation is for non-payment of premium. The mailing of any notice shall be sufficient proof of notice and the effective date of cancellation stated in the notice shall become the end of the Period of Insurance. Delivery of any written notice either by the Insured or by WPIL shall be equivalent to mailing.
24. In the event that this Policy is cancelled by the Insured, subject to the provisions of this Policy, WPIL shall retain 100% of the minimum deposit premium as detailed in the Schedule.

### Clearance Procedures

25. The Insured agrees that it will maintain and use reasonable "clearance procedures" in connection with the acquisition, production, publication, distribution, licensing, Advertising and Publicising of the Insured Production and will use all reasonable efforts to obtain from third parties from who, it obtains material and services written indemnities against Claims arising out of the use of such materials services. If the Insured uses reasonable care to observe all clearance procedures, any inadvertent failure on its part to do so shall not relieve WPIL of liability. At the request of WPIL, the Insured will furnish WPIL copies of its clearance procedures.
26. Clearance procedures 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.
27. It is a warranted condition precedent to coverage under this Policy that attorneys satisfactory to WPIL will supervise and approve acquisition and clearance procedures and general operation of the Insured as respects the Insured Production.

### Defence and Settlement

#### Defence and Counsel

28. WPIL shall have the right and duty to take over and defend in the name of the Insured, through counsel of WPIL's choice, any Claim which may ultimately involve WPIL in any liability subject to the following:
  - a. WPIL's obligation to pay the cost of defense is limited to one such counsel except as set forth in (b). below.



- b. If a conflict of interest arises which imposes a duty under applicable law on the part of WPIL to provide independent counsel to the Insured, the Insured shall have the right to select the defense attorney, or consent to our choice of attorney, unless at the time the Insured is advised of such conflict, it expressly waives the right to such counsel, in writing. It is expressly understood that fifty (50%) of the costs and fees for such independent counsel shall be paid by WPIL and fifty (50%) shall be paid by the Insured, subject to clauses 29( c ) to ( l ) (inclusive) below.
- c. Both independent counsel selected by the Insured, and counsel selected by WPIL, shall be allowed to participate in all aspects of the litigation. Both counsel shall co-operate fully in the exchange of information consistent with each counsel's ethical and legal obligation to the Insured Counsel selected by WPIL shall be lead counsel.
- d. The selection of independent counsel by the Insured shall be in accordance with the following express terms and conditions:
  - i. Independent counsel shall have at least five (5) years of tort litigation practice that includes substantial defense experience in the subject matter of the litigation. At the time of selection, such counsel shall provide in writing to WPIL the particulars of such experience for approval.
  - ii. Independent counsel shall maintain professional errors and omissions insurance with appropriate deductibles, limits and other provision taking into consideration, among other things, the amounts and exposure involved in the litigation. Such insurance shall be maintained during the entire period of the litigation and for reasonable periods thereafter, but not less than two (2) years. Independent counsel shall provide certificates evidencing such insurance upon selection and thereafter from time to time upon request of WPIL. Such insurance shall provide 30 days prior notice to WPIL in the event of cancellation.
  - iii. The rates paid by WPIL for its share of the Insured's independent counsel fees shall be the independent counsel's regular rate for similar work, not to exceed, however, rates actually paid by WPIL to attorneys retained by WPIL in the ordinary course of business in defence of similar actions in the community where the Claim arose and is being defended. Any dispute concerning attorney'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.
  - iv. It shall be the duty of the Insured and of independent counsel selected by the Insured to disclose to WPIL all information they have concerning the litigation, except privileged matters pertaining to coverage disputes, and to inform and consult with WPIL and their counsel in a timely manner on all matters concerning the litigation. 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 independent counsel to WPIL's appointed counsel shall not waive any privilege as to any other party.
- e. The Insured may waive its right to select independent counsel by signing a form substantially as follows: "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 authorise my Insurer to select a defense attorney to represent me in this lawsuit."
- f. In the event that the Insured waives its right to select independent counsel, counsel selected by WPIL shall defend all Claims, but shall not be obligated to, nor shall such counsel render any services or advice, either to WPIL or the Insured, with respect to coverage under the Policy or any alleged conflicts or interest between the Insured and WPIL or between one Insured and another Insured.
- g. If in the opinion of WPIL, there are both covered and uncovered allegations, facts, or relief sought in any Claims or litigation and counsel selected by WPIL's is defending all such Claims or causes of action, costs and fees shall be allocated, to the extent reasonably possible, between covered and uncovered matters, WPIL to pay the costs and fees of the covered matters and the Insured to pay the costs and fees of uncovered matters. WPIL, in its sole discretion, may advance costs and fees for both covered matters and uncovered matters, while any coverage issue remains unresolved, but such advances shall not be deemed a waiver of any rights of WPIL to recoup costs or fees advanced on uncovered matters. WPIL shall have the right to waive, in writing, WPIL's benefits under this subsection.
- h. No conflict of interest between WPIL and any Insured 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 Policy limits.
- i. No conflict of interest shall be deemed to exist as to allegations or facts of the litigation for which the Insurer denies coverage.



### Co-operation

29. The Insured shall, at its own expense, co-operate with WPIL in the defense of any Claim covered or alleged to be covered by the Policy. Such co-operation shall be deemed to include, but not limited to:
- a. Aiding in securing, compiling, summarising and analysing evidence and information necessary to defend the Claim;
  - b. Obtaining the attendance of witnesses, and attending hearings and trials;
  - c. Assisting in effecting settlement and executing any and all documents which WPIL may reasonably require in connection with the defense or disposition of any Claim and in the prosecution of appeals;
  - d. 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 WPIL may be liable;
  - e. After first notice of Claim, the Insured shall not communicate with claimant or its representatives except with the consent of WPIL.
  - f. If, prior to the first or any subsequent exhibition, release, distribution or broadcast, of any Insured Production the Insured received a Notice of Claim or notice that a Claim will be made against them, the Insured, after notifying WPIL, shall send a written report to WPIL or its counsel stating that it has thoroughly investigated such Claim or possible Claim and satisfied themselves that such a 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 WPIL and their attorneys before proceeding with any exhibition, release, distribution, broadcast or rebroadcast;
  - g. The Insured is obligated to and shall take such steps, at its own expense, to protect their and WPIL's interest and to eliminate, mitigate or minimize the damages which may arise from any Claim as would reasonably be taken in the absence of this or similar insurance, making such retraction and corrections to or in connection with any Insured Production as WPIL may request. In the case of corrections, the cost of making the same shall be borne by the Insured and WPIL in accordance with their respective deductible and liability limit set forth elsewhere in this Policy and all other provisions of this Policy. The requirements of this paragraph shall include the withdrawal from distribution, exhibition, release or broadcast of the alleged infringing Insured Production, subject to the following qualification:
    - i. As to Claims that have been reported to WPIL, upon demand of WPIL to the Insured for withdrawal from distribution, exhibition, release or broadcast, the liability of WPIL for damages and all costs and expenses of defense or other costs or expenses under this Policy arising from or connected with the Claim underlying the demand for withdrawal shall be limited to one-half (1/2) of all such damages, costs and expenses as shall occur after the date of such demand in the event the Insured refuses, in its discretion, to make such.
    - ii. All decisions by the Insured or WPIL in respect of any withdrawal must be exercised in good faith and with reasonable justification after individual evaluation of the Claim in dispute.

### Settlement

30. WPIL shall have the right to dispose of any Claim by settlement or otherwise, in its sole discretion. This right shall continue whether or not the Claim is being defended by counsel selected by any Insured. The Insured shall not insure any expense, make any payment, settle or otherwise dispose of any Claim that may involve WPIL in liability without first having obtained the written consent of WPIL. The Insured shall not interfere in any negotiations of WPIL for the settlement of or the handling of any Claim. If the Insured shall refuse the settlement of any Claim as authorised by WPIL, the liability of WPIL to the Insured for such Claim shall be limited to the amount for which settlement could have been made plus defense costs incurred prior to the date of such refusal, and WPIL shall be relieved of any further liability for the Claim and/or any of the provisions of this Policy. Costs and expenses of any settlement or judgment shall be allocated, to the extent reasonably possible, between covered and uncovered matters, WPIL to pay that portion of the settlement or judgment for covered matters and the Insured to pay that portion of the settlement or judgment on uncovered matters.

### Definition

31. As used throughout these clauses 29 - 35 (inclusive), the term "Insured" shall also include, as the context requires, any party protected under the coverage's of this Policy as an indemnified party under Clause 3 in the section headed "What is Covered by This Contract of Insurance".



#### **Costs**

32. WPIL shall not be liable for the cost of expenses of prosecuting or defending any Claim unless the same shall have been incurred with the written consent of WPIL. The costs and expenses of prosecuting any action in which WPIL shall have an interest by subrogation or otherwise shall be divided between the Insured and WPIL in proportion to the amounts which they would be entitled to receive, respectively, if the action should be successful.

#### **Payment of Deductible**

33. WPIL 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 WPIL within twenty (20) days thereafter for such part of the deductible amount as has been paid by WPIL. The notice of payment of the deductible shall be sent to the Insured by mail or personal delivery, 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.

#### **No Waiver**

34. 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 WPIL shall not operate as a waiver by WPIL of any rights it may have by reason of such failure.

#### **Insolvency or Bankruptcy**

35. WPIL agrees that the insolvency or bankruptcy of the Insured will not release WPIL from payment of any sums which the Insured shall become legally obligated to pay for which coverage is provided under the terms and conditions of this Policy.

#### **Misrepresentation and Fraud**

36. Coverage under this Policy shall be void if the Insured knowing concealed or misrepresented any material fact or circumstance concerning this insurance, or in the case of any fraud or false swearing by the Insured touching any matter relating to this insurance, whether before or after a loss. Further, if the Insured shall make any Claim knowing the same to be false or fraudulent in any manner, this Policy shall be void as respects the specific Claim and WPIL shall have the right to terminate this Policy prospectively. Any act, error or omission of any Insured shall not be imputed to any other Insured for the purpose of determining applicability of this paragraph.

#### **Notice of Claim**

37. In the event the Insured becomes aware of any Claim or threatened Claim that might be covered by this Policy, it must give written notice thereof as soon as practicable to WPIL or its agent with the fullest information available to the Insured at the time. The Insured must immediately send to WPIL, a copy of any Claim made or of any summons, complaint, pleading or other documents served upon it in any suits commenced in connection with any Claim covered or alleged to be covered by this Policy.

#### **Premiums**

38. The premium payable under this Policy shall be as stated in the Declaration and any Endorsements.

#### **Statutory Provisions**

39. If any term or condition of the Policy is contrary to any specific statutory provisions in the jurisdiction in which this Policy is issued to the Insured, which shall be the Insured's address shown in the Declarations, such term or condition shall be deemed to be severable and such statutory provision shall supercede and govern such term or condition, but the remaining provisions of this Policy shall remain in full force and effect.

#### **Subrogation**

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

#### **Term of Policy**

41. 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 the Declarations, or as endorsed onto this Policy. However, if this Policy is cancelled or terminated sooner than the period stated in such Declarations or endorsement(s) for any reason whatsoever, then the Period of Insurance shall expire on the date of termination or cancellation.



42. In the event that any additional Insured Production is added to this Policy by Endorsement or Declaration, this term of coverage of such additional Insured Production, but not for any other production insured under this Policy shall be the period set forth in such Endorsement or Declaration. The Term of this Policy is the same as the Period of Insurance.

#### **Territorial Limits**

43. The territory of this Policy is the entire world, unless otherwise endorsed hereon.

## **Policy Definitions**

The words defined below are used throughout this policy. Any other definitions are shown in the section to which they apply.

**“Additional Insured”** means a party who is Insured only with respect to Claims arising out of any act, error or omission of the Named Insured on accordance with all the terms and conditions of this Policy and only with respect to work, productions and/or services which are Insured under this Policy.

**“Advertising: and Publicising”** includes promotion or any of the Insured Productions made by or under the control of the Insured.

**“Business”** means Your Business as detailed in the Schedule.

**“Claim”** means the receipt of a demand for money or services against the Insured by any one person, firm or corporation as a consequence of the same injurious act, error or omission, including the use or dissemination of the same injurious material, regardless of the frequency of repetition or the number or kind of media used. If more than one person, firm, or corporation makes a Claim or filed a suit as a consequence of the same injurious act, error or omission, they shall be considered as one person, firm or corporation.

**“Declaration”** means any written statement of the Insured whether required by WPIL or not and which shall form part of this Policy.

**“Defence Costs”** means that party of any Claim consisting of costs, charges, solicitors fees and expenses incurred in defending, investigating or monitoring legal actions, Claims, or proceedings and appeals, and the cost of appeal, attachment or similar bonds, but without any obligation on the part of WPIL to apply for or furnish any such bond. Such Defence Costs are included within and subject to, the applicable Limit of Liability of the Policy.

**“Exhibitor”** means any distributor, Exhibitor, radio or television broadcasting station or network, advertiser or advertising agency, sponsor or other Licensee of the Insured.

**“Insured”** means the Named Insured and any Subsidiaries of the Named Insured, and any employee, officer, stockholder or director of either while acting within the scope of their duties as such. If the Named Insured is a Partnership or Joint Venture, the unqualified word “Insured” also includes any partner of joint venture therein, but only with respect to their liability as such. If the services of any employee are obtained through a loan out corporation, then such corporation shall be an “Insured” under this Policy, but only for acts, errors or omissions of the loaned employee within the scope of their employment on any of the Insured Productions.

Terms **“Named Insured”** and **“Additional Named Insured”** shall be interchangeable and shall mean the parties named in the Declaration and endorsements of this Policy. However, cancellation of this Policy shall be accepted only from the Named Insured.

**“Insured Production”** means the specific production referred to in the application or Declaration or Schedule attached to this Policy. No other productions are covered under this Policy unless and until a separate Application for any such Production has been signed by the Insured, approved by WPIL and the production is endorsed onto this Policy.

**“Limit of Liability”** means the maximum extent of WPIL’s liability as detailed in the schedule and/or Declarations.

**“Period of Insurance”** means the period detailed in the Declarations or Schedule and any renewal further agreed to by WPIL and for which You pay the applicable premium.

**“Policy”** means this policy wording forming part of the contract of insurance between The Insured and WPIL.



**“Schedule”** is the most recent and current policy Schedule including any expiry notice or insurance renewal issued to You and includes any Declaration or other document forming part of this Policy as need be.

**“Subsidiary”** means a corporation of which at least 51% of the issued and outstanding capital share having the right to vote for the election for directors is owned and controlled by the Named Insured.

**“Title Report”** is a report prepared by individuals or organisations acceptable to WPIL, based upon the records of the U.S. Copyright Office, which identifies and describes identical or similar titles.

**“Twelve Month Period”** means the Period Of Insurance unless Your premium is paid quarterly or monthly or if the Period Of Insurance is more than twelve months then the Twelve Month Period is any Twelve Month Period commencing from the date this policy commenced and each Twelve Month Period thereafter.

**“WPIL, Us, Our and/or We”** means Western Pacific Insurance Limited (WPIL).

**“You, Your and/or The Insured”** means the insured person(s) or party named in the Schedule.