



## CREATIVE FREELANCE INSURANCE

FOR



MEMBERS

## POLICY DOCUMENT

1st December 2016 to 30th November 2017

Arranged by:

Hencilla Canworth Limited, Simpson House, 6 Cherry Orchard Road, Croydon, CR9 6AZ

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# CREATIVE FREELANCE INSURANCE

## POLICY SCHEDULE

**IMPORTANT NOTICE: Please check this Policy very carefully.**

This insurance is subject to the information detailed in this document. The Insured should carefully review the contents of this Document (including its attached Schedule and Certificate of Insurance). If any of the information set out therein is incorrect, the Insured must notify the Insurer. Failure to do so may invalidate the Insurance provided.

Should at any time prior to the expiry date of this insurance any of the information change, then the Insured has a duty to notify the Insurer of changes as soon as reasonably possible.

Policy Number: CFP/212189113

Insured: Any Eligible Member of a-n The Artists Information Company's Arts Organisers scheme who has paid the appropriate premium and been issued with a Certificate of Insurance

Eligible Member: Eligible Member shall mean any person who complies with all of the following criteria.

An Eligible Member must

- a) be a member of a-n The Artists Information Company's Arts Organiser scheme on the date of their commencement of cover under this policy
- b) undertake an Insured Occupation
- c) be in business either as a
  - i. self-employed individual with no Employees (other than close family members for clerical duties only)
  - ii. Limited Company where the member is the sole employee and majority shareholder
- d) be resident in the United Kingdom, the Channel Islands or the Isle of Man
- e) have not made a claim under a Public Liability or Professional Indemnity insurance policy in the 3 years prior to their commencement of cover under this policy.

Business: This Policy is only operative in respect of an Insured Occupation.

Insured Occupation shall mean:

Directing, curating, commissioning, managing, coordinating, producing, acting as agent for, consulting on, or assisting with the creating of arts and cultural activities including but not limited to public and community art, arts education and interpretation, galleries and exhibitions, festivals and events, studios and workshops, digital developments, professional development and training, public relations, marketing and audience development, fundraising and sponsorship.

Period of Insurance: 1<sup>st</sup> December 2016 to 30<sup>th</sup> November 2017 or as stated on the Certificate of Insurance

Operative Sections and Limits of Indemnity:

Section Number	Section	Limit of Indemnity	Excess
1	Public & Products Liability	£5,000,000	£250.00
2	Professional Indemnity	£1,000,000	£250.00



# INTRODUCTION

## **Certification and extent of policy coverage**

This is to certify that in accordance with the authorisation granted under Contract Number OIMCC150039 to Hencilla Canworth Limited by the Insurers and in consideration of the premium specified having been paid, Insurers agree to the extent and in the manner detailed, to indemnify the Insured against loss or Damage sustained or legal liability for accidents happening, which occur during the Period of Insurance and arising from the Business, as detailed in the Policy Schedule, after such loss, damage or liability has been proved.

Provided always that:

- 1) Insurers liability shall not exceed the limits of liability expressed in the attaching Schedule or such other limits of liability as may be substituted by endorsement and agreed by or on their behalf;
- 2) this Policy insures only in respect the sections specified in the Policy Schedule.
- 3) this Policy is subject to all the provisions, conditions, warranties and exclusions which are contained within the body of the wording or that may be endorsed or added thereto, all of which are to be considered as incorporated and shall be read together

## **Duty of Fair Presentation**

The Insured is required to make a fair presentation of the risk to Insurers.

If the Insured breaches its duty to provide a fair presentation and any such breach was deliberate or reckless, Insurers may regard the Policy as void and are not required to return any paid Premium to the Insured.

If the breach was not deliberate or reckless, Insurers' remedy shall depend upon what Insurers would have done if the Insured had complied with the duty of fair presentation:

1. Insurers may regard the Policy as void if Insurers would not have entered into the Policy on any terms in the absence of the breach. In this case, the Insurers must return the premium paid.
2. If the Insurers would have entered into the Policy, but on different terms (other than terms relating to premium) the Policy is to be treated as if those different terms applied from the outset, if the Insurer so requires.
3. If the Insurers would have entered into the Policy but would have charged a higher premium the Insurers may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims).

This Policy has been issued and signed on behalf of Insurers by

Hencilla Canworth Limited  
Simpson House  
6 Cherry Orchard Road  
Croydon  
Surrey  
CR9 6AZ

Authorised signatory



Dated Monday, 14 November 2016

# CUSTOMER INFORMATION

## Identity Of Insurers

### *Royal & Sun Alliance Insurance plc*

Royal & Sun Alliance Insurance plc (No. 93792) is registered in England and Wales at St. Mark's Court, Chart Way, Horsham, West Sussex, RH12 1XL.

### *AIG Europe Limited*

AIG Europe Limited is registered in England: company number 1486260. Registered address: The AIG Building, 58 Fenchurch Street, London EC3M 4AB.

### *Covéa Insurance plc*

Covéa Insurance plc, Registered in England and Wales No.613259.  
Registered office, Norman Place, Reading, RG1 8DA

All Insurers are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

## Several Liability

The liability of the Insurers is several and not joint and is limited solely to the extent of their individual proportions as shown in the Endorsement entitled Identity of Insurers. The Insurers are not responsible for the subscriptions of any co-subscribing insurers or any other insurer or co-insurer who for any reason does not satisfy all or part of its obligations.

## Financial Services Compensation Scheme (FSCS)

Royal & SunAlliance Insurance plc, AIG Europe Limited, Aviva Insurance Limited, Covéa Insurance plc are members of the Financial Services Compensation Scheme (FSCS). This provides compensation in case any member goes out of business or into liquidation and is unable to meet any valid claims against its policies. You may be entitled to compensation if we cannot meet our obligations, depending on the circumstances of the claim. Further information about the compensation scheme can be obtained from the FSCS.

## Your Right to Cancel

You have the right to cancel the insurance Policy within 14 days of receiving the Policy documentation and receive a full refund of any premium paid, provided that there have been no claims either paid, reported or outstanding. For the purposes of this cancellation clause, it will be deemed that You will have received the Policy document upon the day following the date it was posted to the Insured by first class post.

If you do cancel this insurance within the initial 14 day period, then no cover will have been in place from the date of inception, as specified in the Schedule, and no liability whatsoever shall attach to the Insurers in respect of the Policy.

If you do not exercise your right of cancellation within the initial 14 day period, this insurance Policy will automatically come into force from the inception date specified in the Schedule. You will remain liable to pay the full annual premium. Following the expiry of the initial 14 day period, this insurance Policy may be cancelled at any time at Your written request. Insurers reserve the right not to allow a return of premium.

To exercise Your right to cancel, contact the broker who arranged this cover for You.

## The Law that Governs the interpretation of this Policy

All disputes concerning the interpretation of this Policy are understood and agreed by both the Insured and the Insurers to be subject to English Law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within England and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

This Policy should be read carefully and if it is incorrect return it immediately to your insurance advisor for alteration.

This Policy should be kept in a safe place – you may need to refer to it if you have to make a claim. It is recommended that you to retain details of your Employers Liability policy/certificates for at least 40 years.



### **The Law that Governs this Policy**

The parties to this contract are free to choose the law applicable to the contract. Unless specifically agreed to the contrary this insurance Policy shall be subject to English Law.

### **Complaints Procedure**

If you have a Complaint which relates to either Your Policy or to a claim which you have submitted under Your policy then please raise this in the first instance with

Hencilla Canworth Ltd  
Simpson House  
6 Cherry Orchard Road  
Croydon  
Surrey  
CR9 6AZ

Telephone: 020 8686 5050  
Fax: 020 8686 5559  
E-mail: mail@hencilla.co.uk

Hencilla Canworth Ltd will aim to resolve Your concerns by close of the next business day.

If Hencilla Canworth are unable to deal with your concerns the matter will be forwarded onto Your Insurer.

Whilst reviewing your complaint Your Insurer will:

- Acknowledge Your complaint promptly
- Investigate Your complaint quickly and thoroughly
- Keep You informed of the progress of your complaint
- Do everything possible to resolve Your complaint

Your Insurer is obliged to provide You with a written offer of resolution within 8 weeks of the date Your complaint was received.

If You are unhappy with the final decision made by Your Insurer, You may be eligible to refer Your case to the Financial Ombudsman Service (FOS). The FOS is an independent body that arbitrates on complaints.

The FOS can be contacted at the following address:

Financial Ombudsman Service,  
South Quay Plaza,  
183 Marsh Wall,  
London,  
E14 9SR

Telephone: 0800 0234567 (for landline users);  
Telephone: 0300 1239123 (for mobile users)  
Email: complaint.info@financial-ombudsman.org.uk  
Website: www.financial-ombudsman.org.uk

You have six months from the date of the final response from Your Insurer to refer Your complaint(s) to the FOS. This does not affect Your right to take legal action, however, the FOS will not adjudicate on any case where litigation has commenced.



## GENERAL DEFINITIONS AND INTERPRETATIONS

Any word or phrase specified hereunder to which a meaning is given has the same meaning wherever it appears in this Policy or any Schedule Endorsement or notice attached or issued by the Insurers unless specifically amended in any individual Policy Section or by any documentation issued by the Insurers

### ***Act of Terrorism***

means an act, including but not limited to the use of force or violence and/or the threat of thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

### ***Business***

means business described in the Policy Schedule

### ***Certificate***

means the most recent Certificate issued to an Insured

### ***Damage***

means loss destruction or damage

### ***Employee***

means any person under a contract of service or apprenticeship with you; or

- (1) any person hired or borrowed by you in the course of their contract of service or apprenticeship with another employer
- (2) any person under a government or other authorised work experience or youth training or similar scheme
- (3) any self employed person
- (4) any labour master or labour only sub-contractor or person supplied by any of them whilst working under the direct supervision or control of the Insured in connection with the Business

### ***Endorsement***

means any additional terms relating to the insurance provided by this Policy which are

- (1) not within the Policy but attached to any Schedule issued by the Insurers or
- (2) within the Policy and stated in the Policy Schedule as applying to this Policy

### ***Geographical Limits***

means United Kingdom the Channel Islands and the Isle of Man

### ***Injury***

means any injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock

### ***Insured/you/your***

means any person(s) named in the Policy Schedule &/or Certificate

### ***Insurers***

for all sections other than Professional Indemnity means the insurers whose identity is stated in the Endorsement entitled Identity of Insurers and whose proportionate liability will be detailed on request. The insurer for the Professional Indemnity section is Royal & SunAlliance Insurance plc.

### ***Period of Insurance***

means period of insurance stated in the Policy Schedule and any subsequent period for which premium payment is made by you and is accepted by the Insurers



***Policy***

means policy wording together with all Schedules Certificates Endorsements and notices attached or issued by the Insurers

***Pollution***

means

- (1) pollution or contamination by naturally occurring or man-made substances forces or organisms or any combination of them whether permanent or transitory and however occurring and
- (2) all loss destruction damage or Injury directly or indirectly caused by such pollution or contamination

***Products***

means any commodity or article (including containers labelling instructions or advice provided in connection therewith) manufactured sold supplied repaired serviced tested financed constructed installed or processed by or on behalf of the Insured from or within the Geographical Limits in connection with the Business

***Schedule***

means the most current Schedule and Certificate issued to you by the Insurers





# SECTION 1 – PUBLIC & PRODUCTS LIABILITY

## DEFINITION APPLICABLE TO THE PUBLIC AND PRODUCTS LIABILITY SECTION

*Any word or phrase specified hereunder to which a meaning is given has the same meaning wherever it appears in this Section or any Schedule Endorsement or notice attached or issued by the Insurers unless specifically amended by any documentation issued by the Insurers*

### **Costs and Expenses**

means

- (1) all costs and expenses recoverable by any claimant from you
- (2) the costs and expenses incurred with the written consent of the Insurers for
  - (a) representation at any Coroner's Inquest or Inquiry in respect of any death
  - (b) the defence of proceedings in any court brought against you in respect of breach or alleged breach of statutory duty resulting in Injury
- (3) all other costs and expenses of litigation incurred with the written consent of the Insurers

relating to an occurrence which may give rise to indemnity

## **INSURING CLAUSE**

In the event of

- (1) accidental Injury to any person
- (2) accidental loss of or accidental damage to property
- (3) accidental loss of amenities nuisance trespass or interference with any right of way light air or water

occurring during the Period of Insurance and arising in connection with your Business or in connection with any Products within the Geographical Limits the Insurers will indemnify you in respect of your liability at law for compensation together with Costs and Expenses

## **BASIS OF PAYMENT**

The liability of the Insurers will not exceed the Limit of Indemnity stated in the Schedule applicable to this Section for any one claim or series of claims arising from one source or original cause

The liability of the Insurers in connection with Products will not exceed the Limit of Indemnity stated in the Schedule in aggregate during any one Period of Insurance

In addition the Insurers will pay Costs and Expenses

## **IN ADDITION THE INSURERS WILL PROVIDE INDEMNITY UNDER THIS SECTION AS FOLLOWS**

### **Indemnity to Others**

- (1) The legal personal representatives of any deceased person who was entitled to claim indemnity under this Section in respect of liability incurred by that person
- (2) Any principal for legal liabilities arising out of work carried out by you under a contract or agreement in respect of which you would have been entitled to indemnity under this Policy if the claim had been made against you

### **Cross Liabilities**

If the Insured comprises more than one party the Insurers will provide indemnity to each in the same manner and to the same extent as if a separate Policy has been issued to each provided that the total amount payable in respect of any one claim or series of claims arising from one source or original cause shall not exceed the Limit of Liability stated in the Schedule applicable to this Section



### **Compensation for Court Attendance**

In the event of the Insured attending court at the request of the Insurers in connection with a claim under this Section the Insurers will compensate you at a rate of each person's wages or salary or £250 per day whichever is the less for each day on which attendance is required

### **Health and Safety at Work and Corporate Manslaughter Defence Costs**

In the event of

- (1) any act omission or incident or alleged act omission or incident leading to criminal proceedings brought in respect of a breach of the Health and Safety at Work Act 1974 Corporate Manslaughter and Corporate Homicide Act 2007 or similar legislation in the United Kingdom or
- (2) an incident which results in an enquiry ordered under the Health and Safety Inquiries (Procedure) Regulations 1975

the Insurers will provide indemnity against Costs and Expenses incurred in representing you in such proceedings including appealing the results of such proceedings as long as the proceedings relate to an act omission or incident or alleged act omission or incident which has been committed during the Period of Insurance within the United Kingdom and in the course of your Business

Provided that

- (a) the Insurers total liability in respect of Costs and Expenses shall not exceed £1,000,000 in the aggregate during any one Period of Insurance
- (b) the Insurers will only indemnify you where Costs and Expenses arise as a result of any matter which is the subject of indemnity under this Policy
- (c) the Insurers will only be liable for Costs and Expenses incurred in respect of legal representation appointed by them
- (d) if there is any other insurance or indemnity in force covering the same Costs and Expenses the Insurers liability shall be limited to a proportionate amount of the total Costs and Expenses but subject always to the limit of indemnity of £1,000,000
- (e) this indemnity will not apply
  - (i) in respect of fines or penalties of any kind
  - (ii) to proceedings consequent upon any Injury deliberately caused by you
  - (iii) to persons other than you or any of your directors partners proprietors or Employees

### **Food Safety Act Defence Costs**

You and also at your request any of your directors partners or Employees for legal costs and expenses incurred

- (1) in defending any prosecution for breach of duty
- (2) with the Insurers' consent in an appeal against a conviction resulting from prosecution

under Part II of the Food Safety Act 1990 committed or alleged to have been committed during the Period of Insurance where circumstances may otherwise give rise to a claim under this Section

excluding legal costs and expenses in connection with any breach of duty arising from a deliberate or premeditated act event or omission which any person claiming indemnity under this Section knows or should have known would be likely to constitute an offence under the above Act

### **Leased and Rented Premises**

Exclusion 4(a) of this Section does not apply to physical loss or damage to premises leased or rented to you in connection with your Business

### **Defective Premises Act**

Liability arising under Section 3 of the Defective Premises Act 1972 or Section 5 of the Defective Premises (Northern Ireland) Order 1975 in respect of the disposal of any premises which were occupied and/or owned by you in connection with your Business

excluding any liability for

- (1) the cost of making good replacement or reinstatement of any defect or workmanship giving rise to such liability
- (2) any physical loss of or damage to such premises



### **Wrongful Arrest**

Legal liability to pay compensation together with Costs and Expenses following any charge of wrongful arrest or malicious prosecution made against you during the Period of Insurance in respect of any allegation of theft or the improper conduct by any person (other than your Employees) at the Premises

### **Overseas Personal Liability**

You and if you so request your spouse or child accompanying you against liability at law for compensation together with Costs and Expenses for liability incurred in a personal capacity while you are visiting a country anywhere in the world in connection with your Business excluding any liability

- (a) arising from any contract or agreement unless liability would have existed otherwise
- (b) arising out of the ownership or occupation of land or buildings
- (c) arising from the carrying on of any trade or profession
- (d) where indemnity is provided by any other insurance
- (e) arising from the ownership possession or use of wild animals firearms (other than sporting guns) mechanically-propelled vehicles aircraft or watercraft

### **Data Protection Act**

Liability arising under Section 22 and/or 23 of the Data Protection Act 1984

Provided that

- (1) you have applied for Registration in the required manner to the Data Protection Registrar and your application has not been withdrawn or refused
- (2) the liability of the Insurers for compensation payable in respect of any one claim or series of claims arising from one source or original cause will not exceed £100,000 in any one Period of Insurance excluding any liability
  - (a) arising from the recording processing or provision of data for reward or to determine the financial status of any person
  - (b) in relation to any act of defamation
  - (c) in connection with any breach of duty arising from a deliberate or premeditated act event or omission which any person claiming indemnity under this Section knows or should have known would be likely to constitute an offence under the above Act

### **Vehicles used as a Tool of Trade**

Exclusion (10) of this Section excludes mechanically propelled vehicles but the Insurers will indemnify you for your liability arising out of

- (1) the use in connection with your Business of any mechanically propelled vehicle (or trailer attached to it) as a tool of trade
- (2) the loading or unloading of or bringing of a load to or taking of a load from any vehicle machine or trailer

excluding liability for which compulsory insurance or security is required under any legislation governing the use of the vehicle or for which indemnity is available under any other insurance

### **Geographical Limits**

The Geographical Limits shall extend to include elsewhere in the world for visits made in connection with your Business in a non-manual capacity provided that you usually reside within the Geographical Limits

### **Sudden and Unintended Pollution**

Pollution is excluded by General Exclusion 1(c) of this Policy but this Section provides Pollution cover subject to all other provisions of this Policy for liability in respect of Injury or loss of or damage to property caused solely by Pollution

- (1) which results from a sudden identifiable unintended and unexpected incident and
- (2) such incident occurs entirely at a specific and identified time and place while the Policy remains in force

Provided that

- (a) all Pollution which arises out of any one incident will be deemed to have happened at the time such incident takes place
- (b) the Insurers will not indemnify you against liability in respect of Pollution happening anywhere in the United States of America or Canada
- (c) the total liability of the Insurers for compensation will not exceed the Limit of Indemnity stated in the Schedule applicable to this Section for this additional cover and for any claim otherwise payable under this Section arising from the same source or original cause

## EXCLUSIONS TO THE PUBLIC AND PRODUCTS LIABILITY SECTION

This Section does not cover

### (1) Excess

the amount stated in the Schedule applicable to this Section as the Excess in respect of (2) of the Insuring Clause to this Section only

### (2) Fines liquidated damages or penalties

liability for fines liquidated damages or penalties of any kind or for punitive exemplary restitutionary or multiplied damages

### (3) Injury to Employees

liability to any Employee for Injury arising out of and in the course of their employment by you

### (4) Property in your custody or control

physical loss of or damage to

- (a) property belonging to you or in your custody or under your control (other than property belonging to your visitors)
- (b) that part of any property on which you or any of your Employees or agents are or have been working where the physical loss or damage results from such work

### (5) Deliberate acts

liability caused by or arising from any deliberate act or omission by or on behalf of any person claiming indemnity under this Section and which could reasonably have been expected of such person having regard to the nature and circumstances of such act or omission

### (6) Contractual liability

liability which attaches itself solely by virtue of a contract or agreement but any liability which would have attached in the absence of such contract or agreement is covered under this Section

### (7) Advice and professional services

liability caused by or arising from

- (a) any advice design or specification given by you or on your behalf for a fee
- (b) professional services rendered by you or on your behalf

### (8) Aircraft hovercraft and watercraft

liability caused by or arising from the ownership possession or use by you or on your behalf of any aircraft hovercraft or watercraft (other than watercraft eight metres in length or less)

### (9) Mechanically propelled vehicles

liability caused by or arising from the ownership possession or use by or on behalf of you of any mechanically propelled vehicle (or trailer attached to it) if being used in circumstances for which compulsory insurance or security is required under any legislation governing the use of the vehicle

### (10) Replacement or repair of defective Products

liability for the cost of making good repairing altering removing or replacing any defective or incorrect Products or making any refund

### (11) Recall of Products

liability arising out of the recall of any Product or part thereof

### (12) Marine and aviation Products

liability caused by or arising from any Products known by you to be for use in or on any aircraft aerospace device hovercraft or waterborne craft or for marine or aviation purposes

### (13) Asbestos

liability arising from the manufacture mining processing distribution testing remediation removal storage disposal sale use or exposure to asbestos or materials or products containing asbestos whether or not there is another cause to loss which may have contributed concurrently or in consequence of a loss.

### (14) Component Building Material

liability directly or indirectly caused by, resulting from or in connection with any component building material that must be removed, encapsulated, or otherwise abated because its presence or release is a hazard to human health.



**(15) Mildew Mould Spore(s) or Allergens**

liability directly or indirectly occasioned by, happening through, arising out of, resulting from or in connection with any fungus of any kind whatsoever, including but not limited to mildew, mould, spore(s) or allergens; or

any costs or expenses associated, in any way, with the abatement, mitigation, remediation, containment, detoxification, neutralization, monitoring, removal, disposal, or any obligation to investigate or assess the presence or effects of fungus of any kind whatsoever, including but not limited to mildew, spore(s), or allergens; or

any obligations or duty to defend any actions directly or indirectly occasioned by, or happening through, arising out of, resulting from or in connection with any fungus of any kind whatsoever, including but not limited to mildew mould spore(s) or allergens

Irrespective of the cause of such fungus, mildew, mould, spore(s) or allergens, and whenever or wherever occurring.

**(16) North American Claims**

In respect of claims happening in North America or where a claim is brought in North America

- a) there will be no indemnity under this policy for fines or penalties for aggravated exemplary or punitive damages
- b) there will be no indemnity under this policy in respect of any legal liability of whatsoever nature directly or indirectly caused or contributed to or occurring by the presence of Asbestos, Asbestos Containing Materials or Asbestos Dust or the release of Asbestos Dust or the exposure of persons buildings or property to Asbestos, Asbestos Containing Materials or Asbestos Dust
- c) all costs and expenses of the claimant and the costs and expenses (incurred by the Insurer or with the Insurer’s written consent) of any person entitled to indemnity are included within the Limit of Indemnity stated in the Schedule
- d) there will be no indemnity under this policy in respect of any legal liability caused by or arising out of pollution or contamination of buildings or other structures or of water or land or the atmosphere
- e) the Insurers will not pay the first £2,500 of any claim arising
- f) North America shall mean the United States of America or Canada or their territories or possessions or Puerto Rico

**(17) Cyber Liability**

liability arising directly or indirectly out of

- (a) loss of alteration of or damage to
- or
- (b) reduction in the functionality availability or operation of any computer system or programme hardware data information repository microchip integrated circuit or similar device in computer equipment or non-computer equipment as a result of your E-activities

For the purpose of this Exclusion E-activities means any use of electronic networks including the internet and private networks intranets extranets electronic mail worldwide web and similar medium carried out by you or by any person persons partnership firm or company acting for you or on your behalf

**(18) Date Recognition**

liability directly or indirectly caused by or consisting of or arising from the failure of any computer data processing equipment or media microchip integrated circuit or similar device or any computer software whether the property of the Insured or not

- (a) correctly to recognise any date as its true calendar date
- (b) correctly to capture save retain and/or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date
- (c) correctly to capture save retain or process any data as a result of the operation of any command which causes the loss of data or the inability correctly to capture save retain or process such data.



## SECTION 2 – PROFESSIONAL INDEMNITY

### DEFINITIONS APPLICABLE TO THE PROFESSIONAL INDEMNITY SECTION

*Any word or phrase specified hereunder to which a meaning is given has the same meaning wherever it appears in this Section or any Schedule Endorsement or notice attached or issued by the Insurers unless specifically amended by any documentation issued by the Insurers*

#### ***Claim***

means demand made against you consisting of or arising from any

- (1) demand, whether oral or in writing, for damages or compensation,
- (2) notice of intention, whether oral or in writing, to commence legal proceedings,
- (3) communication invoking any pre action protocols,
- (4) notification of arbitration, ombudsman or adjudication proceedings.

#### ***Computer System***

means any

- (1) computer, data processing equipment, media or part thereof,
- (2) electronic system of data storage and retrieval, or communications system, network, protocol or part thereof,
- (3) electronic storage device, microchip integrated circuit, real time clock system or similar device,
- (4) computer software (including but not restricted to application software, operating systems, runtime environments or compilers), firmware or microcode,
- (5) electronic documents utilised in the ownership, security and management of your electronic communication system, worldwide web site, internet site, intranet site, extranet site, or web address.

#### ***Documents***

means any

- (1) project models or displays,
- (2) deeds, wills or agreements,
- (3) maps, plans, records, photographs, negatives, calculations, drawings,
- (4) written or printed books, letters, certificates, documents or forms of any nature whatsoever,
- (5) computer software, files, documents and systems records, which are your property or are under your custody or control.

This definition does not include bearer bonds, evidence of share ownership (whether in electronic or other form), coupons, bank or currency notes and other negotiable paper.

#### ***Excess***

means the first part of each and every payment in relation to a Claim or loss which is payable by you. The amount of the Excess is stated in the Schedule. The Excess does not apply to Other Costs or the cover for Documents, Court Attendance or Representation Costs.

#### ***Limit of Indemnity***

means the maximum amount stated in the Schedule the Insurers will pay in respect of any one Claim or loss and in total for all Claims or losses first made during any one Period of Insurance in respect of any single Insured. Any dishonesty or fraud committed by a person acting alone or in collusion with others shall be treated as one Claim or loss.

#### ***Other Costs***

means all costs and expenses incurred in the investigation, defence or settlement of any Claim in so far as those costs and expenses have been incurred with the Insurers written consent.



## INSURING CLAUSE

- (1) The Insurers will indemnify you in respect of any Claim arising out of the conduct of your Business, first made against you and notified to the Insurers during the Period of Insurance, for any civil liability including claimants costs and expenses arising from any negligent act or negligent omission committed by you
- (2) The Insurers will indemnify you for reasonable costs and expenses incurred by you in respect of any reasonable action taken to mitigate a loss or potential loss that would otherwise be the subject of a Claim under this Section provided that
  - (a) the Insurers give prior written consent to you incurring such costs and expenses and
  - (b) you prove to the Insurers satisfaction that the amount of the costs and expenses to be incurred are less than any likely award of damages arising from the same potential Claim.

The total liability under this Cover clause shall not exceed the Limit of Indemnity and Other Costs.

If the amount paid to dispose of a Claim or loss exceeds the Limit of Indemnity, the Insurers liability for Other Costs will only be the proportion which the Limit of Indemnity bears to the total amount paid to dispose of such Claim or loss.

The Insurers shall not be liable for the amount of the Excess or any lesser amount for which a Claim or loss may be settled.

## IN ADDITION THE INSURERS WILL PROVIDE COVER UNDER THIS SECTION AS FOLLOWS

### Documents

The Insurers will pay all reasonable costs and expenses incurred by you in replacing, restoring or reconstituting Documents, lost or damaged in the conduct of your Business provided the loss or damage is suffered and first discovered by you and notified to Us during the Period of Insurance.

The total liability under this clause shall not exceed GBP 50,000.

The Insurers will not provide indemnity in respect of any loss or damage to Documents which are stored on a Computer System unless such Documents are backed up with the intention that in the event of loss or damage the back up can be used as the basis for restoring the Documents to their original status.

### Compensation for Court Attendance

In the event of the following persons attending court at the request of the Insurers in connection with a Claim under this Section the Insurers will compensate you at a rate of each person's wages or salary or at the following rates whichever is the less for each day on which attendance is required

- (1) by you or any of your directors or partners £250 per day
- (2) by any of your Employees £100 per day

### Representation Costs

The Insurers will pay on your behalf any reasonable costs and expenses incurred by you for representation at properly constituted hearings, tribunals or proceedings provided that

- (a) such costs and expenses are incurred with the Insurers prior written consent,
- (b) the subject of the hearing, tribunal or proceeding may become a Claim under this policy and in respect of which the Insurers may be obliged to provide an indemnity under the terms of this policy.

The total liability under this clause shall not exceed GBP 50,000.



## **SPECIAL CONDITIONS TO THE PROFESSIONAL INDEMNITY SECTION**

### **(1) Payment Of Limit Of Indemnity**

In connection with any Claim, the Insurers may at any time pay you the amount of the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any lesser amount for which the Insurers believe that such Claim can be settled and thereupon the Insurers shall relinquish the control of such Claim and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment and for which the Insurers may be responsible under this policy.

### **(2) Legal Proceedings Condition**

you shall not be required to contest any legal proceedings unless a senior barrister (to be mutually agreed upon between you and the Insurers) shall advise that such action has a reasonable prospect of success.

## **EXCLUSIONS TO THE PROFESSIONAL INDEMNITY SECTION**

No indemnity will be provided in respect of

### **(1) Employment Disputes**

any Claim arising directly or indirectly from or caused by any dispute between you and any present or former Employee or any person who has applied for or been offered employment with you.

### **(2) Bodily Injury And Damage To Property**

any liability whatsoever arising out of

- (a) Bodily Injury to any person
- (b) loss or damage to Property.

Bodily Injury is defined as death, disease, illness or mental injury.

Property is defined as

- (1) the ownership, possession and use, by you or on your behalf, of any buildings, structures, premises or land or
- (2) that part of any building leased, occupied or rented by you or
- (3) any other property (mobile or immobile) belonging to you.

### **(3) Fines And Penalties**

any fines or penalties or any punitive, multiple, aggravated or exemplary damages where such can be identified separately within any award of any court or tribunal.

### **(4) Financial Interest**

any Claim brought by any entity

- (a) in which you exercise a controlling interest,
- (b) which exercises a controlling interest over your business by virtue of having a financial or executive interest in you, unless such Claim arises from or is caused by a claim made against such entity by an independent third party.

### **(5) Directors & Officers Liability**

any Claim made against you in your capacity as a director, officer or trustee unless arising from an alleged breach of professional duty in the conduct of your Business.

### **(6) Employee Benefits**

any Claim or loss arising from any plan, program or scheme established or maintained to provide benefits to you or any Employee.

### **(7) Aviation / Marine / Motor Insurance**

any Claim arising directly or indirectly from or caused by the ownership, possession or use, by you or on your behalf, of any aircraft, watercraft, hovercraft, motor vehicle or trailer.

### **(8) Defamation**

any defamation unless you can show that it was committed by you in good faith.

### **(9) Pollution**

any Claim or loss arising directly or indirectly from or caused by Pollution.





**(10) USA / Canada Exclusion**

any Claim

- (a) instituted or pursued in the United States of America, its territories and possessions and/or Canada (including without limitation the enforcement of a judgement or finding of a court or tribunal of another jurisdiction or otherwise),
- (b) in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply,
- (c) which involves the enforcement or attempted enforcement of a judgement or finding of a court or tribunal of the United States of America, its territories and/or possessions or Canada.

**(11) Contractual Liability**

any Claim arising out of liability assumed by you under any contractual agreement

- (a) whereby you assume a standard of care greater than that reasonably expected of your profession,
- (b) by which you warranted or guaranteed a particular outcome,
- (c) by which you agreed to pay a contractual penalty or liquidated damages in the event of breach,
- (d) which provides greater benefit or a longer lasting benefit than that given to the party with whom you originally contracted,

unless such liability would have attached to you in the absence of the features listed above.

**(12) Asbestos**

any Claim or loss arising directly or indirectly from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity, whether alleged or actual.

**(13) Financial Results**

any Claim or loss arising from any trading losses or trading liabilities incurred by any business managed by or carried on by you.

**(14) Products**

any liability arising from

- (a) the defective workmanship of any construction, installation, repair, alteration or maintenance work,
- (b) any manufacturing defect of any goods or products supplied by you

**(15) Retroactive Date**

any Claim arising directly or indirectly from or caused by any work undertaken by you or on your behalf prior to

- (a) the commencement of your cover under this policy or
- (b) the date from which you have continuously held Professional Indemnity Insurance for an Insured Occupation

whichever is the earlier.

**(16) Other Insurance**

any Claim or loss where you are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.

**(17) Circumstances Known At Inception**

any Claim or loss or circumstance that might give rise to a Claim or loss which

- (a) has been notified under any other insurance attaching prior to the inception of this policy,
- (b) you were or should, after reasonable enquiry, have been aware of prior to the inception of this policy.

**(18) Computer Viruses**

any Claim arising directly or indirectly from or caused by any computer virus or any other computer program or code designed to produce unexpected, unauthorised or undesirable effects or operations.



**(19) Date Recognition**

liability directly or indirectly caused by or consisting of or arising from the failure of any computer data processing equipment or media microchip integrated circuit or similar device or any computer software whether the property of the Insured or not

- (a) correctly to recognise any date as its true calendar date
- (b) correctly to capture save retain and/or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date
- (c) correctly to capture save retain or process any data as a result of the operation of any command which causes the loss of data or the inability correctly to capture save retain or process such data



# GENERAL EXCLUSIONS APPLYING TO THIS POLICY

## (1) GENERAL

The following Exclusions apply to all Sections of your Policy.

This Policy does not cover any loss destruction damage consequential loss or liability directly or indirectly caused by or contributed to by or arising from

### (a) Radioactive Contamination

- (i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive toxic explosive or other hazardous or contaminating properties of any nuclear installation reactor or other nuclear assembly or nuclear component thereof
- (iii) any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

### (b) Pressure Waves

pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds

### (c) Pollution

as defined in the General Definitions and Interpretations other than Pollution resulting in Damage to property insured by this Policy or interruption of or interference with the Business not otherwise excluded caused by any of the following perils

Fire Explosion Aircraft Earthquake Riot Malicious Damage Storm or Flood Escape of Water Impact Sprinkler Leakage Theft or Subsidence all as defined in Section 1- Buildings and Contents of this Policy

## (2) WAR AND ACT OF TERRORISM

This Policy does not cover any claim hereunder of whatsoever nature directly or indirectly occasioned by or happening through or in consequence of

- (a) war invasion acts of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war mutiny civil commotion assuming the proportions of or amounting to popular rising military rising insurrection rebellion revolution military or usurped power martial law confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or public or local authority Act of Terrorism or any action taken in controlling preventing suppressing or in any way relating to any of the above
- (b) riot civil commotion and (except in respect of Damage by fire or explosion) strikers locked out workers or persons taking part in labour disturbances or malicious persons in Northern Ireland other than in respect of the insurance provided by Section 1 – Public and Products Liability



# GENERAL CONDITIONS APPLYING TO THIS POLICY

If you need to notify Insurers of a claim or of any circumstances or incident which may cause a claim you should contact:

**HENCILLA CANWORTH LTD, SIMPSON HOUSE, 6 CHERRY ORCHARD ROAD, CROYDON, SURREY, CR9 6AZ**

TELEPHONE NUMBER: 020 8686 5050  
FAX NUMBER: 020 8686 5559  
E-MAIL: mail@hencilla.co.uk

## (1) CLAIMS CONDITIONS

### Section 1

If any event happens which may give rise to a claim being made under this Policy you must

- (a) notify the Insurers as soon as possible and give full details of the occurrence
- (b) inform the police immediately of any malicious damage or of the theft or loss of any property
- (c) forward to the Insurers immediately on receipt and without answering it any letter claim writ summons or process
- (d) send to the Insurers at your own expense a written claim together with such detailed particulars and proofs certificates or other documents as may reasonably be required by the Insurers and send also details of any other insurance covering the loss destruction damage Injury or liability for which you are claiming indemnity under this Policy within
  - (i) seven days of Damage caused by riot civil commotion strikes labour disturbances or malicious persons
  - (ii) 30 days of Damage by any other cause or Injury insured by this Policy
- (e) take all reasonable steps to diminish or avoid the Damage
- (f) not negotiate with nor make any admission of liability nor offer payment or promise to any party without the Insurers' written consent

### Section 2

- (1) If during the Period of Insurance, regardless of any Excess, you
  - (a) receive any Claim, you shall give written notice to the Insurers as soon as practicable,
  - (b) become aware of any circumstance that might give rise to a Claim, you shall give written notice to the Insurers of such circumstance as soon as practicable. Any Claim subsequently arising from any circumstance notified to the Insurers shall be deemed to have been made during the Period of Insurance in which the notice of such circumstance was first received by the Insurers,
  - (c) discover a reasonable cause for suspicion of any dishonesty or fraud on the part of any past or present director, partner or Employee of yours, whether giving rise to a Claim or not, you shall give written notice to the Insurers of such discovery as soon as practicable,
  - (d) discover any loss of or damage to Documents, you shall give written notice to the Insurers of such discovery as soon as practicable, provided always that any such written notice under any part of this condition (1) is received by the Insurers during the Period of Insurance.
- (2) In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim or loss, you must not admit liability for or settle any Claim or incur any related costs or expenses without the Insurers written consent.
- (3) In the event of a Claim or loss or the discovery of a circumstance that might give rise to Claim or loss, the Insurers will be entitled, at their own expense at any time, to take over and conduct in your name the defence or settlement of any such Claim or loss.

If the Insurers do take over and conduct the defence or settlement of any such Claim, you shall give the Insurers all such information and assistance as they may reasonably require and that is in your

power to provide. Without prejudice to the generality of the above, your duty to assist the Insurers includes

- (a) providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with any civil procedure rules, practice directions and pre-action protocols as may be issued,
- (b) allowing the Insurers to present the best possible defence of a Claim within the time constraints available,
- (c) ensuring ready access to all and any information that the Insurers may require in the defence of a Claim or investigation of a loss,
- (d) ensuring the payment, on demand, of the Excess in conjunction with the terms of any settlement agreed by the Insurers.

## **(2) FRAUD**

If the Insured makes a fraudulent claim under this Policy the Insurers shall not be liable to pay the Insured any sums in respect of the fraudulent claim. The Insurers may recover from the Insured any sums that the Insurers have already paid to the Insured in respect of the fraudulent claim. The Insurers may by notice to the Insured treat this Policy as terminated with effect from the date of the Insured's fraudulent act.

## **(3) SUBROGATION**

In the event of any claim under this Policy you shall at the Insurers' request and expense take and permit to be taken all necessary steps for enforcing rights against any other party in your name before or after any payment is made by the Insurers

## **(4) THE INSURERS' RIGHTS**

If any event happens which may give rise to a claim under this Policy the Insurers will be entitled to

- (a) exercise sole conduct and control over the defence or settlement of any claim made upon you or any other person covered by this Policy by any other party
- (c) prosecute in your name or the name of any other person covered by this Policy but for the Insurers' benefit any claim for damages or indemnity

## **(5) COMPLIANCE WITH TERMS**

If the Insured breaches any warranty in this Policy, the Insurer's liability under the Policy shall be suspended from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Insurer will have no liability to the Insured for any loss which occurs, or which is attributable to something happening, during the period when the Insurer's liability is suspended

Where:

- (i) there has been a failure to comply with a term (express or implied) of this Policy, other than a term which defines the risk as a whole; and
- (ii) compliance with such term would tend to reduce the risk of loss of a particular kind and/or loss at a particular location and/or loss at a particular time,

the Insurer cannot rely on the breach of such term to exclude, limit or discharge its liability if the Insured shows that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

## **(6) INSTALMENTS**

If the premium for this Policy is payable by instalments it is a condition precedent to the Insurers' liability that each instalment shall be paid when due otherwise all benefit under this Policy shall be forfeited from the date when such instalment was due

## **(7) CANCELLATION**

The Insurers may cancel this Policy by sending seven days' notice by recorded delivery letter to you at your last known address and making a proportionate return of premium for any unexpired Period of Insurance for which you have paid.

Where a claim has been made during the current Period of Insurance the full annual premium will still be payable despite cancellation of cover and Insurers reserve the right to deduct this from any claim payment.

**(8) TAX**

In addition to the premium you will pay to the Insurers any tax due on the premium which the Insurers are required to collect will be incorporated in accordance with current legislation

**(9) DATA PROTECTION ACT 1998**

It is agreed by the Insured that any information provided to the Insurer regarding the Insured for the purpose of accepting insurance and handling any claims may if necessary be divulged to third parties provided that it will be processed by the Insurer in compliance with the provisions of the Data Protection Act 1998

**(10) CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person or company who was not party to this Policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this Condition does not affect any right or remedy of a third party which exists or is available other than by virtue of this Act



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