



**Public & Products Liability and Professional Indemnity
Insurance for members of the Scottish Artists Union**

**Policy Document
1st April 2023 to 31st March 2024**

insurance arranged by:
Hencilla Canworth GI Limited, Simpson House, 6 Cherry Orchard Road, Croydon, CR9 6AZ
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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 the Certificate (including its attached schedule, endorsements and statement of fact). 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 / Certificate number: ENTCL/00242

Client Reference: SCOTT-2

Insured: Individual Registered Members Of The Scottish Artists Union

Business: Activities undertaken by an insured member in connection with their individual artistic practice in the preparation, lecturing, teaching, public display and sale of fine art and applied art.

Cover includes but is not limited the members participation in exhibitions, open studio events, displays involving live non-static physical performance, work undertaken in community settings, socially engaged practice and participatory art

Period of Insurance: 1st April 2023 to 31st March 2024, both dates inclusive

OPERATIVE SECTIONS OF COVER

Section	Insured / Not Insured	Limit of Indemnity	Excess
1. Public & Products Liability	Insured	£5,000,000	£250
2. Professional Indemnity	Insured	£5,000,000	£250





Policy / Certificate number: ENTCL/00242

Client Reference: SCOTT-2

Insured: Individual Registered Members Of The Scottish Artists Union

ADDITIONAL POLICY ENDORSEMENTS

Heat Application Warranty

The Insured hereby warrants that the following special precautions will be complied with on each occasion of any work involving the use of blow lamps, blow torches, flame guns, hot air guns, electric gas or other welding equipment, or portable grinding equipment:

(i) All blow lamps, blow torches and flame guns or hot air guns are to be lit in strict accordance with the manufacturer's instructions, not left unattended when lit and extinguished immediately after use;

(ii) The area in which the work is to be carried out (including adjoining shafts or openings and the area on the other side of any wall or partition) is to be inspected to establish whether any combustible material (other than the property to be worked upon) is in danger of ignition either directly or by conduction of heat;

(iii) Wherever practicable, all combustible material is to be removed to a distance of not less than 10 metres from the point of work and such material which cannot be removed is to be covered by overlapping sheets of non-combustible material or afforded equivalent protection;

(iv) Suitable fire extinguishing appliances are to be kept available for immediate use at the point of work;

(v) All portable grinders are to be switched on and used in strict accordance with the manufacturer's instructions and switched off when unattended and immediately after use;

(vi) A person who is competent in the use of fire extinguishing appliances is to be appointed to act as a firewatcher in conjunction with the operative using the equipment and to remain in attendance until use of all such equipment has ceased and all torches have been extinguished and all portable grinders switched off*;

(vii) Wherever practicable, gas cylinders not in use are to be kept outside the building in which the work is taking place or otherwise kept at least 15 metres from the point of work;

(viii) Immediately following completion of each period of work and during the period of not less than thirty minutes following completion of each period of work, a thorough and continuous check that there is no fire or risk of fire is to be made of the whole area in which the work is to be carried out (including adjoining shafts or openings and the area on the other side of any wall or partition).

*Warranty (vi) is deemed not to apply when the Insured works alone as a sole trader

Personal Service Limited Companies Inclusion Clause

The policy is extended to provide indemnity to a limited company as defined under the Companies Act 1985 operating in connection with the Business where the Insured is the sole employee and director other than one additional director or employee who is a family member and engaged in clerical or administrative duties only.

Professional Indemnity Insurance – Retroactive Date

No cover shall apply under the Professional Indemnity section of this policy in respect of any claim arising from work done by the Insured prior to the later of 21st April 2018 or the commencement date of continuous membership of the Scottish Artists Union.



North American Inclusion Clause

Notwithstanding anything herein to the contrary, it is hereby noted and agreed that cover under this policy is extended to include activities undertaken by the Insured in North America, subject to the undernoted conditions. In respect of claims happening in North America or where a claim is brought in North America

- a) the Limit of Indemnity is restricted to a maximum of £5,000,000 in respect of each and every claim made under subsection 2 (Public Liability) and in respect of all claims made under sub-section 3 (Products Liability)
- b) there will be no indemnity under this policy for fines or penalties for aggravated exemplary or punitive damages
- c) 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
- d) 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
- e) 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
- f) the Insurers will not pay the first £2,500 of any claim arising
- g) North America shall mean the United States of America or Canada or their territories or possessions or Puerto Rico





Scottish Artist Union Members' Public & Products Liability and Professional Indemnity

POLICY WORDING

Certification and extent of policy coverage

This is to certify that in accordance with the authorisation granted to Hencilla Canworth GI 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 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

In Witness whereof, this Policy has been signed at the place stated and on the date specified below on behalf of

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

Authorised signatory



Date: Tuesday, 28 March 2023

Customer Information

Identity Of Insurers (except in respect of the Professional Indemnity Section)

Covéa Insurance plc

Individual proportion 100%

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

Covéa Insurance plc 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)

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.

Notifying Claims

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 Gl, 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

Please refer to the Claims Conditions listed on pages 10 & 11 for further information about actions you should, and should not, take if a claim under the policy may be necessary.

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.

Complaints Procedure

It is always the intention to provide a first class standard of service. However it is appreciated that occasionally things go wrong. In some cases the broker who arranged the insurance will be able to resolve any concerns and you should contact them directly.

Alternatively if you need to complain please contact the Pen Underwriting Limited Complaints Officer quoting your policy or claim number.

Pen Underwriting Limited Complaints Officer
3 Atlantic Quay, 20 York Street, Glasgow, G2 8JH
Telephone: 0141 285 3539; Email: pencomplaints@penunderwriting.com

Your complaint will be acknowledged within 5 business days of receipt. If the complaint is not resolved within 4 weeks of receipt Pen Underwriting will write to You and let You know what further action will be taken. A final response letter will be issued within 8 weeks of receipt. Upon receipt of the letter if You remain dissatisfied You may refer Your complaint to the Financial Ombudsman Service.

The Financial Ombudsman Service is an independent body that arbitrates on complaints.

The Financial Ombudsman Service can be contacted at the following address:

The Financial Ombudsman Service
Exchange Tower
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.

DATA PRIVACY NOTICE(S)

Hencilla Canworth GI Limited (Hencilla) and Pen Underwriting Limited (Pen) are each a separate data controller of the personal information you provide or personal information that has been provided by a third party.

Hencilla and Pen collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, brokers, insurance intermediaries such as Managing General Agents, reinsurers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

Hencilla and Pen may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please refer to the respective Privacy Policies referenced below. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

Privacy Policies:

Hencilla Canworth GI Limited - https://www.hencilla.co.uk/Documents/HC_Privacy_Notice.pdf

Pen Underwriting Limited - <https://www.penunderwriting.co.uk/Privacy-Policy>

Pen Underwriting Ltd act as underwriting agent for a consortium of Insurers noted under the 'Identity of Insurers' notice.

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**

Business

means the business specified in the **Policy Schedule** and conducted at or from premises in Great Britain, Northern Ireland, The Channel Islands or the Isle of Man (and including for the avoidance of doubt, while the **Insured** is temporarily engaged in **Business** outside of these territories) and shall include the ownership, repair and maintenance of the **Insured's** own property

Damage

means loss of possession of or damage to tangible property.

Injury

means death, bodily injury, illness or disease of or to any person.

Insured

1. the person, persons or corporate body named in the Policy **Schedule**
2. subsidiary companies of the **Insured** notified to and accepted in writing by the **Insurers**.

Insurers

The insurers whose identity is stated in the Endorsement entitled 'Identity of Insurers' and whose proportionate liability will be detailed on request.

Person Employed

means any:

1. Employee being a person under a contract of service or apprenticeship with the **Insured**
2. labour master and persons supplied by him
3. person employed by labour only sub-contractors
4. self employed person under the control of the **Insured**
5. person hired to or borrowed by the **Insured**
6. person undertaking study or work experience or youth training scheme with the **Insured** working for the **Insured** in connection with the **Business**.

Pollution

means pollution or contamination of the atmosphere, or of any water, land, buildings or other tangible property.

Product

means any tangible property after it has left the custody or control of the **Insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.

Terrorism

means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), 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.

General Exclusions To This Policy

(1) Radioactive Contamination

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

- (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
- (iv) the use of any explosive nuclear weapon or device or the emission discharge dispersal or escape of fissile material emitting a level of radioactivity
- (v) the emission discharge dispersal release or escape of any solid liquid or gaseous chemical compound which when suitably distributed is capable of causing incapacitating disablement or death amongst people or animals
- (vi) the emission discharge dispersal release or escape of any pathogenic (disease producing) micro-organism(s) and chemically synthesised toxin(s) (including genetically modified organisms and chemically synthesised toxins).

(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 & Products Liability.

(3) Date Recognition Failure

This Policy does not cover legal liability or costs and expenses directly or indirectly caused by or consisting of or arising from the failure of any computer data processing equipment or media micro chip integrated circuit or similar device or any computer software whether the property of the **Insured** or not to

- (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 Conditions To This Policy

The following Conditions apply to all Sections of this Policy and you must comply with them

(1) 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.

(2) Claims Conditions

Section 1

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

- (a) notify the **Insurers** as soon as possible and give full details of the occurrence
- (b) forward to the **Insurers** immediately on receipt and without answering it any letter claim writ summons or process
- (c) 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, the **Insured** shall

- (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, 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 any **Person Employed**, whether giving rise to a Claim or not, give written notice to the **Insurers** of such discovery as soon as practicable,
- (d) discover any loss of or **Damage** to Documents, 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, the **Insured** 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 the **Insured's** 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, the **Insured** shall give the **Insurers** all such information and assistance as they may reasonably require and that is in the **Insureds** power to provide. Without prejudice to the generality of the above, the **Insureds** 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**.

(3) 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.

(4) Subrogation

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

(5) 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 the **Insured** or any other person covered by this Policy by any other party
- (b) prosecute in the **Insured's** name or the name of any other person covered by this Policy but for the **Insurers'** benefit any claim for damages or indemnity

(6) Cancellation

The **Insurers** may cancel this Policy by giving 30 days' notice in writing of such cancellation to the Scottish Artist Union at their last known address.

(7) 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

(8) 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.

Section 1 - Public And Products Liability

OPERATIVE CLAUSE

The **Insurers** will indemnify the **Insured** against their legal liability to pay damages (including claimants' costs, fees and expenses) for and/or arising out of accidental **Injury** and/or **Damage** occurring during the Period of Insurance and arising out of the **Business** specified in the Policy Schedule, subject always to the terms, conditions and exclusions of such Section and of the **Policy** as a whole.

DEFINITIONS TO THE PUBLIC & PRODUCTS LIABILITY SECTION

Defence Costs

shall mean costs, fees and expenses incurred by the **Insured** with the written consent of the **Insurers** in the defence or settlement of any claim under this **Policy**.

Hazardous Premises

shall mean:

1. power stations or nuclear installations/establishments
2. oil, gas or chemical
 - i. refineries
 - ii. bulk storage
 - iii. production premises
3. aircraft, aerospace or hovercraft
4. watercraft other than work on or in watercraft in docks, harbours, boatyards or inland waterways
5. railways or airports other than non-airside or non-trackside work

EXCLUSIONS TO THE PUBLIC AND PRODUCTS LIABILITY SECTION

This Section does not apply to or include legal liability:

(1) Injury to Persons Employed

in respect of **Injury** to any **Person Employed** arising out of and in the course of employment by the **Insured**.

(2) Motor Vehicles

arising out of the ownership, possession or use by or on behalf of the **Insured**, or any person or party entitled to indemnity, of any motor vehicle or trailer for which compulsory insurance or security is required by legislation, other than legal liability:

- a. caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer in circumstances where compulsory insurance or security is not required by any legislation
- b. arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer except where indemnity is provided by any motor insurance contract
- c. arising out of any motor vehicle or trailer temporarily in the **Insured** custody or control for the purpose of parking except liability for which compulsory insurance or security is required by any legislation

(3) Aviation, Marine and Offshore Risks

arising out of the ownership, possession or use by or on behalf of the **Insured** of any aircraft, hovercraft, offshore installation and/or rig and/or platform or watercraft (other than watercraft not exceeding 10 metres in length whilst on inland waterways)

(4) Property In Your Care, Custody & Control

for **Damage** to property owned, leased to, hired by, under hire purchase, on loan to, held in trust by or otherwise in the **Insured** care, custody or control other than:

- a. clothing and personal effects (including vehicles and their contents) of Employees and visitors

- b. premises (including contents therein) temporarily occupied by the **Insured** for work therein or thereon but no indemnity shall be granted for **Damage** to that part of the property on which the **Insured** is or has been working and which arises out of such work
- c. premises tenanted by the **Insured** provided always that liability for such **Damage** is not assumed by the **Insured** under agreement where liability would not have existed in the absence of the agreement

(5) Professional Indemnity Risks

arising out of breach of professional duty, or wrongful or inadequate advice given separately for a fee or in circumstances where a fee would normally be charged.

(6) Explosives and Pyrotechnics

arising from any use of fireworks, explosives or pyrotechnics, other than the use of flash paper, flash cotton or flash string.

(7) Work At Height

any activity undertaken more than 10 metres above ground or floor level.

(8) Tattooing, Body Piercing and Face Painting

arising from work undertaken by the **Insured** involving tattooing (whether temporary or permanent), body piercing, face painting or any form of treatment or process involving the application of chemicals to the body of any person.

(9) Hazardous Premises

any activity undertaken at a **Hazardous Premises**.

(10) Defective Products

for costs incurred in the repair, reconditioning or replacement of any **Product** or part thereof which is alleged to be defective

(11) Product Recall

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

(12) Aviation or Marine Products

arising out of any **Product** which with the **Insured** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, hovercraft or waterborne craft

(13) Product Inefficacy

arising from the failure of any **Product** to perform its intended function.

(14) Contractual Liability

arising by virtue of a contract or agreement but which would not have arisen in the absence of such contract or agreement

(15) Punitive Damages

for any award of punitive or exemplary damages whether as fines, penalties, multiplication of compensatory awards or damages, or in any other form whatsoever

(16) Liquidated Damages and Penalty Clauses

arising out of liquidated damages clauses, penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties

(17) Excess

for the **Excess** stated in the **Schedule** in respect of the first amount of each claim arising out of **Damage** arising from work undertaken away from your own studio premises

(18) Other Insurance

which forms the subject of insurance by any other Policy and this **Policy** shall not be drawn into contribution with such other insurance.

(19) Deliberate Acts

arising out of the deliberate, conscious or intentional disregard by the **Insured** or the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**

(20) Pollution

arising out of **Pollution** of the atmosphere or of any water, land, buildings or other tangible property except to the extent that the **Insured** demonstrates that such **Pollution**:

- a. was the direct result of a sudden, identifiable, unintended and unexpected incident occurring in its entirety at a specific time and place during the **Period of this Insurance**
- b. was not the direct result of the **Insured** failing to take reasonable precautions to prevent such **Pollution**

Provided always that all such **Pollution** which arises out of one incident shall be considered for the purposes of this **Policy** to have occurred at the time such incident takes place and that **Insurers** total liability to pay damages (including claimants' costs, fees and expenses) under this clause shall not exceed the **Limit of Indemnity** stated in the **Schedule** in the aggregate in respect of the **Period of this Insurance**.

(21) Mould & Fungus

- a. 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
- b. 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 any fungus of any kind whatsoever, including but not limited to mildew, mould, spore(s) or allergens; or
- c. any obligation or duty to defend any actions 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

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

For the purpose of this exclusion, **Injury** shall include mental anguish, mental injury and/ or emotional distress.

(22) Building Materials

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.

(23) Asbestos

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 of loss which may have contributed concurrently or in consequence of a loss.

SPECIAL CONDITIONS TO THE PUBLIC & PRODUCTS LIABILITY SECTION

Indemnity To Others

The indemnity granted extends to:

1. the officers, committees and members of the **Insured's** canteen, social, sports, medical, fire fighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such
2. any person or firm for legal liabilities arising out of the performance of a contract with the **Insured** constituting the provision of labour only
3. any principal for legal liabilities arising out of work carried out by the **Insured** under a contract or agreement in respect of which the **Insured** would have been entitled to indemnity under this **Policy** if the claim had been made against the **Insured**
4. the personal representatives of any person or party indemnified by reason of this Clause 3 in respect of legal liability incurred by such person or party.

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exclusions of this **Policy** as though they were the **Insured**.

Cross Liabilities

Each person or party granted indemnity by this **Policy** is separately indemnified in respect of claims made against any of them by any other subject to the **Insurers** total liability not exceeding the stated **Limits of Indemnity**.

Limits Of Indemnity

The **Insurers** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the **Schedule** in respect of any one occurrence or series of occurrences arising from one originating cause.

Provided always that the **Limit of Indemnity**:

1. in respect of liability arising out of **Pollution** applies to the total amount of damages (including claimants' costs, fees and expenses) payable in respect of all occurrences during the **Period of Insurance**
2. in respect of liability arising out of **Products** applies to the total amount of damages (including claimants' costs, fees and expenses) payable in respect of all occurrences during the **Period of Insurance**.

North American Jurisdiction Conditions

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 or 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

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

Defence Costs

The **Insurers** will also pay all **Defence Costs**.

Defence Costs include legal expenses:

1. incurred by or awarded against the **Insured** arising out of any prosecution of the **Insured**:
 - (i) for breach or alleged breach of Part 1 of the United Kingdom Health & Safety at Work Act 1974 (and/or legislation of similar effect)
 - (ii) for any offence under Part II of the Consumer Protection Act 1987 and/or Part II of the Food Safety Act 1990 (and/or legislation of similar effect)Provided that **Insurers** shall not be liable for any fines or penalties imposed as a consequence of such prosecution
3. arising out of representation at any Coroner's Inquest or Fatal Accident Inquiry
4. arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this **Policy**

Defence Costs will be payable in addition to the **Limits of Indemnity**.

Compensation For Court Attendance

In the event of the **Insured** attending court as a witness at the request of the **Insurers** in connection with a claim which is the subject of indemnity under this **Policy** the **Insurers** will provide compensation to the **Insured** at the rate of £250 for each day on which attendance is required.

Data Protection Act

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

- (1) the **Insured** has applied for Registration in the required manner to the Data Protection Registrar and the 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

Wrongful Arrest

Legal liability to pay compensation together with Costs and Expenses following any charge of wrongful arrest or malicious prosecution made against the **Insured** 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

The **Insured** and if they so request their spouse or child accompanying them against liability at law for compensation together with Costs and Expenses for liability incurred in a personal capacity while they are visiting a country anywhere in the world in connection with the **Business** but 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

SECTION 2 – PROFESSIONAL INDEMNITY

OPERATIVE CLAUSE

- (1) The **Insurers** will indemnify the **Insured** in respect of any **Claim** arising out of the conduct of the **Insured's Business**, first made against the **Insured** and notified to the **Insurers** during the **Period of Insurance**, for any civil liability including claimants costs and expenses arising from
 - (a) a breach of a duty of care or any negligent act or negligent omission committed by the **Insured**;
 - (b) any dishonest or fraudulent act committed by any past or present partners, directors or **Persons Employed** or any sub-contractor or outsourcer contracted by the **Insured** and under their direct control or supervision;
 - (c) infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off;
 - (d) breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;
 - (e) defamation
 - (f) negligence or a breach of duty of care in connection with the transmission of a **Computer Virus** or a denial of service attack;
 - (g) any other civil liability unless otherwise excluded by this policy
- (2) The **Insurers** will indemnify the **Insured** for reasonable costs and expenses incurred by the **Insured** 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 the **Insured** incurring such costs and expenses and
 - (b) the **Insured** 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**.

In respect of any **Claim** or loss, the **Insurers** will not provide indemnity to any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission.

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.

DEFINITIONS TO THE PROFESSIONAL INDEMNITY SECTION

Wherever the following words and phrases appear in this Section or any Schedule Endorsement or notice attached or issued by the **Insurers** they will always have the same meaning

Claim

means demand made against the **Insured** 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.

Computer Virus

means a corrupting instruction that propagates itself via a computer system or network

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 the **Insured's** property or are under the **Insured's** 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 the **Insured**. 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**. 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.

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 the **Insured** and any present or former **Persons Employed** or any person who has applied for or been offered employment with the **Insured**.

(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

- (a) the ownership, possession and use, by the **Insured** or on the **Insured's** behalf, of any buildings, structures, premises or land or
- (b) that part of any building leased, occupied or rented by the **Insured** or
- (c) any other property (mobile or immobile) belonging to the **Insured**.

(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 the **Insured** exercise a controlling interest,
- (b) which exercises a controlling interest over the **Insured's Business** by virtue of having a financial or executive interest in the **Insured**, 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 the **Insured** in the **Insured's** capacity as a director, officer or trustee unless arising from an alleged breach of professional duty in the conduct of the **Insured's Business**.

(6) Employee Benefits

any **Claim** or loss arising from any plan, program or scheme established or maintained to provide benefits to the **Insured** or any **Person Employed**.

(7) Aviation / Marine / Motor Insurance

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

(8) Dishonest And Malicious Acts

any **Claim** or loss

- (a) arising from any dishonest or fraudulent act or omission committed by any person after the discovery, in relation to that person, of reasonable cause for suspicion of any dishonest or fraudulent act or omission.
- (b) arising from any dishonest or fraudulent act or omission unless the **Insured's** annual accounts are prepared or certified by an independent and properly qualified accountant or auditor.

(9) Defamation

any defamation unless the **Insured** can show that it was committed by the **Insured** in good faith.

(10) Contractual Liability

any **Claim** arising out of liability assumed by the **Insured** under any contractual agreement

- (a) whereby the **Insured** assume a standard of care greater than that reasonably expected of the **Insured's** profession,
 - (b) by which the **Insured** warranted or guaranteed a particular outcome,
 - (c) by which the **Insured** 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 the **Insured** originally contracted,
- unless such liability would have attached to the **Insured** in the absence of the features listed above.

(11) Pollution

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

(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 the **Insured**.

(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 the **Insured**

(15) Retroactive Date

any **Claim** arising directly or indirectly from or caused by any work undertaken by the **Insured** or on the **Insured's** behalf prior to any **Retroactive Date** stated on the **Schedule**.

(16) Other Insurance

any **Claim** or loss where the **Insured** is 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) the **Insured** 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** that was not specifically targeted at your system.

(19) 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.

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 the **Insured** 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) Dishonest or Fraudulent Acts Conditions

Where a **Claim** or loss involves the dishonest or fraudulent act or omission of any former or present partner, director, member, **Person Employed**, consultant or sub-contractor,

- (a) the **Insured** shall at the **Insurers** request and expense take all reasonable steps to obtain reimbursement from such person,
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall be deducted from any amount payable under this policy,
- (c) no indemnity in respect of such **Claim** or loss shall be afforded to any person committing or condoning such dishonest or fraudulent act or omission,
- (d) nothing herein shall preclude the **Insurers** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission.

(3) Legal Proceedings Condition

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

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

Documents

The **Insurers** will pay all reasonable costs and expenses incurred by the **Insured** in replacing, restoring or reconstituting **Documents**, lost or damaged in the conduct of the **Insured's Business** provided the loss or damage is suffered and first discovered by the **Insured** and notified to **Insurers** 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 **Insured** attending court as a witness at the request of the **Insurers** in connection with a claim which is the subject of indemnity under this **Policy** the **Insurers** will provide compensation to the **Insured** at the rate of £250 for each day on which attendance is required.

Representation Costs

The **Insurers** will pay on the **Insured's** behalf any reasonable costs and expenses incurred by the **Insured** 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.