




Miscellaneous Errors And Omissions Policy (Civil Liability)

Schedule

Policy Number:			
The Assured:			
Address:			
Assured's Business:			
Limit of Indemnity:		In the aggregate, costs and expenses inclusive	
Retention:		each and every Claim , costs and expenses inclusive	
Period of Insurance:	From:	To:	Both dates inclusive
Premium:	(plus IPT @ 6% =) =		
Retroactive Date:			
Jurisdiction:			
Date of Proposal:			
IN WITNESS whereof this Policy has been signed by:			
on behalf of MARKEL (LONDON) LIMITED.			Dated:

Insuring Clauses

1. Legal liability

Underwriters agree, subject to the terms, limitations, exclusions and conditions of this Policy to indemnify the **Assured**

- (a) against all sums which the **Assured** shall become legally liable to pay as damages and Claimants' costs as a result of any **Claim** first made against the **Assured** during the **Period of Insurance** in respect of any civil liability whatsoever or whensoever arising incurred in the conduct of the **Assured's Business**;
- (b) for any loss which the **Assured** shall first discover they have sustained during the **Period of Insurance** by reason of any dishonest or fraudulent acts or omissions on the part of any former or present **Employee**;
- (c) against any **Claim** first made against the **Assured** during the **Period of Insurance** in respect of third party liabilities as a consequence of **Documents** having been destroyed, damaged, lost or mislaid;

2. Costs and expenses

Underwriters further agree, subject to the terms, limitations, exclusions and conditions of this Policy, to indemnify the **Assured** against:

- [a] necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any **Claim** which falls to be dealt with under Insuring Clause 1 of this Policy;
- [b] necessary and reasonable costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the replacement or reconstruction of any **Documents** held in the course of the **Assured's Business** which are discovered during the **Period of Insurance** to have been physically destroyed or damaged or lost or mislaid and which after diligent search cannot be found.

Costs and expenses do not include:

- (i) damages or costs awarded against the **Assured**
- (ii) remuneration of whatsoever nature due to the **Assured** or to any **Director, Partner, Member** or **Employee** thereof.

Definitions

(The following words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural. Words in the masculine gender shall include the feminine.)

“**Assured**” shall mean

- i) the person or entity stated in the Schedule;
- ii) the **Directors, Partners and Members** of such entity;
- ii) in the event of the death, incompetence or bankruptcy of any natural person in [i] or [ii] above, their estate, heirs, legal representatives or assigns for legal liabilities incurred by those within [i] or [ii] above and costs and expenses which are indemnifiable under this Policy.

“**Assured's Business**” shall mean the professional activities stated in the Schedule.

“**Claim**” shall mean a demand by a Claimant for compensation or damages from or the assertion of a right against any **Assured**

- a) All claims consequent upon or attributable to one originating source or cause or the dishonest, fraudulent, criminal or malicious acts of any one or more persons shall be deemed to be one **Claim**.
- b) Paragraph (a) above shall not apply to the provisions of the Policy relating to the Excess/Retention, or to Condition 1 (Claims Notification).

“**Computer**” shall mean any computer or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.

“**Director**” shall have the meaning given by section 250 of the Companies Act 2006.

“**Document**” shall mean

- i) all documents excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, drafts, postal orders, money orders, bills of exchange, promisory notes, securities, negotiable instruments and the like, and
- ii) separable programmes, instructions or data for physical incorporation into any **Computer**

belonging to the **Assured** or for which the **Assured** is legally responsible, whilst in the custody of the **Assured**, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the **Assured** in the ordinary course of the **Assured's Business**.

“**Employee**” shall mean any person, other than a **Director**, **Partner** or **Member** of the **Assured**, who is

- i) under a contract of service or apprenticeship with the **Assured**, or
- ii) supplied to or hired or borrowed by the **Assured**, or
- iii) under any work experience or similar scheme with the **Assured**

whilst employed or engaged by and under the control of the **Assured** in connection with the **Assured's Business**.

“**Jurisdiction**” shall mean those territories stated in the Schedule.

“**Member**” shall mean any person holding that position within a limited liability partnership.

“**Partner**” shall have the meaning given by the Partnership Act 1890.

“**Period of Insurance**” shall mean the period stated in the Schedule.

“**Pollution**” shall mean the discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, viruses, bacteria, fumes, acids, alkalis, chemicals and waste (including, but not limited to material to be recycled, reconditioned or reclaimed).

“**Premium**” shall mean the amount stated in the Schedule plus all applicable taxes at the rates from time to time in force.

“**Proposal**” shall mean the written proposal bearing the date stated in the Schedule and containing particulars and statements together with any other information supplied to Underwriters.

“**Terrorism**” shall mean the use of force or violence and/or the threat thereof, by 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.

“**Unlawful Association**” shall mean any organisation which is engaged in **Terrorism** and includes any organisation which at any relevant time is a proscribed organisation within the meaning of the Terrorism Act 2000 (UK) or any amendment or re-enactment thereof.

“**War**” shall mean war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.



Limit Of Indemnity

Underwriters' total aggregate liability under this Policy including any endorsements hereto (inclusive of all costs and expenses) shall not exceed the Limit of Indemnity stated in the Schedule, irrespective of the number of **Claims** made and the number of parties against whom such **Claims** may be made.

In respect of Insuring Clause 1. (c) the Limit of Indemnity shall be GBP 250,000 and not as otherwise stated, this sub-limit shall form part of the Limit of Indemnity stated in the Schedule.

Excess

Underwriters shall only be liable in excess of the Retention stated in the Schedule, which retention shall apply to each and every **Claim** and shall be inclusive of costs and expenses.

In respect of Insuring Clause 1 (c) the Excess shall be £500 each and every claim including costs and expenses, and not as otherwise stated in the Schedule.



Exclusions

(The heading of each exclusion is for ease of identification only)

Underwriters shall not be liable to indemnify the **Assured** against any **Claim** or costs and expenses

a) Circumstances Known At Inception

which results, directly or indirectly, from any **Claim** or circumstances existing prior to or at the inception of this Policy and which the **Assured** knew or ought reasonably to have known might give rise to a **Claim** or to the incurring of costs and expenses.

b) Other Insurance

in respect of which the **Assured** is entitled to indemnity under any other insurance.

c) Dishonest And Malicious Acts

- i) which results, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act or omission of the **Assured**, other than as provided by Insuring Clause 1(b)
- ii) under Insuring Clause 1(b), which results, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act or omission committed by any person after the discovery of reasonable cause for suspicion of any dishonest, fraudulent, criminal or malicious act or omission in relation to that person.

Furthermore,

- i) no person committing or condoning a dishonest, fraudulent, criminal or malicious act or omission shall be entitled to indemnity under this Policy.
- ii) the following shall be deducted from any amount payable by Underwriters:
 - a) any monies which but for such act or omission would be due from the **Assured** to the person committing or condoning such act
 - b) any monies held by the **Assured** and belonging to such person
 - c) any monies recovered following action in accordance with Condition 4 of this Policy.

d) Fines/Penalties

in respect of any fine or penalty, punitive, exemplary, restitutionary or non-compensatory damages (other than exemplary damages in respect of libel, slander or defamation).



e) Bodily Injury/Property Damage

for bodily injury, mental injury, mental anguish, shock, sickness, disease or death sustained by any person (other than emotional distress arising from any libel, slander or defamation), or for any loss, damage or destruction of property, including loss of use thereof, (other than as provided by Insuring Clause 2(b)) unless such **Claim** directly results from breach of a professional duty owed by the **Assured** to a third party.

f) Employers Liability

for any breach of any obligation owed by the **Assured** as an employer or potential employer to any **Employee** or prospective **Employee**.

g) Property

which results, directly or indirectly, from the ownership, possession or use by or on behalf of the **Assured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

h) Products

which results, directly or indirectly, from goods or products sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the **Assured** or by any person, acting for or on behalf of the **Assured**.

i) Contractual Liability

which results, directly or indirectly, from any liability assumed by the **Assured** under any express warranty (except warranty of authority), agreement or guarantee unless such liability would have attached to the **Assured** notwithstanding such express warranty, agreement or guarantee.

j) Trading Loss

which results, directly or indirectly, from any trading losses or liabilities or debts incurred by any business managed by or carried on by the **Assured**.

k) Consortia And Joint Ventures

which results, directly or indirectly, from the operation or existence of any joint venture or consortia in which the **Assured** has an interest other than in respect of any Claim arising from acts or omissions by the **Assured**.

l) Insolvency/Bankruptcy Of Assured

which results, directly or indirectly, from the insolvency or bankruptcy of the **Assured**.



m) Financial Interest

made against the **Assured** by

- (i) any other person falling within the definition of the **Assured**, or
- (ii) any parent or subsidiary company of the **Assured**, or
- (iii) any person or entity having a financial, executive or controlling interest in the **Assured**, or
- (iv) any company or entity in which the **Assured** or any **Director, Partner** or **Member** of the **Assured** has a financial, executive or controlling interest

unless such **Claim** is for indemnity or contribution in respect of a claim made by an independent third party against such company, person or entity and directly results from breach of a professional duty owed by the **Assured** to that third party.

n) Infringement

alleging infringement of copyright, patent, registered design, trade mark or any other intellectual property rights or passing off.

o) Loss Of Data

under Insuring Clause 2(b), which results, directly or indirectly, from the failure or inefficacy of any programme, instruction or data for use in any **Computer** occasioned other than through its physical destruction or damage.

p) Computer Viruses And Unauthorised Use

which results, directly or indirectly, from, in consequence of or in any way involving computer viruses or the failure to prevent unauthorised use of or access to any **Computer**.

q) Retroactive Date

which results, directly or indirectly, from any act, error, event or omission occurring or alleged to have occurred prior to the Retroactive Date (if any) stated in the Schedule.

r) Legal Action

in a court or before an arbitration tribunal outside the **Jurisdiction**, made under laws of countries outside the **Jurisdiction** or where action is brought in a court within the **Jurisdiction** to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.

s) **War And Terrorism**

which results, directly or indirectly, from, in consequence of or in any way involving:

- i) **War**
- ii) **Terrorism**
- iii) Any unlawful, wanton or malicious act committed by a person or persons acting on behalf of or in connection with any **Unlawful Association**

regardless of any other cause or event contributing concurrently or in any other sequence to the **Claim** or loss.

Also excluded is loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing suppressing or in any way relating to (i) and/or (ii) and/or (iii) above.

If Underwriters allege by reason of this exclusion that any loss, damage, cost or expense is not covered by this Policy the burden of providing the contrary shall be upon the **Assured**.

In the event that any part of this exclusion is found to be invalid or unenforceable, the remainder shall still be of full force and effect.

t) **Radioactive Contamination Or Explosive Nuclear Assemblies**

brought about by or contributed to by or consequent upon

- i) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- ii) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

- i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

u) **Pollution**

which results, directly or indirectly, from, in consequence of or in any way involving any **Pollution**.

Conditions

(The heading of each condition is for ease of identification only)

1. Claims Notification

- [a] The **Assured**, as a condition precedent to their right to indemnity under this Policy, shall give to Underwriters immediate notice in writing during the Period of Insurance of
- (i) any **Claim**, or
 - (ii) the receipt of any notice of an intention to make a **Claim**, or
 - (iii) any circumstances of which the **Assured** shall become aware which might reasonably be expected to give rise to a **Claim**, giving detailed reasons for the anticipation of such **Claim**, together with full particulars as to dates and persons involved, or
 - (iv) the destruction, damage or loss of any **Documents**.

Such notice having been given as required by (ii) or (iii) above, any subsequent **Claim** made shall be deemed to have been made during the **Period of Insurance**.

- [b] The **Assured**, as a condition precedent to their right to indemnity under this Policy, shall give Underwriters such information and co-operation as Underwriters may reasonably require including all reasonable assistance in identifying locations and securing the co-operation of any appropriate individual to sign a Statement of Truth or any other document necessary to comply with the Civil Procedure Rules current at the material time.

2. Claims Handling

- [a] The **Assured**, as a condition precedent to their right to indemnity under this Policy, shall not admit liability for or settle or attempt to settle any **Claim** or incur any costs and expenses in connection with any **Claim** without Underwriters' prior written consent (such consent not to be unreasonably withheld).
- [b] Underwriters shall be entitled, but not obliged, at any time to take over and conduct in the name of the **Assured** the defence or settlement of any **Claim** or to prosecute in the name of the **Assured** for their own benefit any claim for payment, indemnity or damages or otherwise against any third party.
- [c] The **Assured** shall not be required to contest any **Claim** unless Leading Counsel (to be mutually agreed upon by the **Assured** and Underwriters or, in default of agreement, to be appointed by the President for the time being of the Law Society) shall advise that such **Claim** should be contested.
- [d] Underwriters shall not settle any **Claim** without the consent of the **Assured**. If however the **Assured** shall refuse to consent to any settlement recommended by Underwriters and shall elect to contest a **Claim**, then Underwriters' liability for such **Claim** (including costs and expenses) shall not exceed the amount for which the



Claim could have been settled inclusive of costs and expenses incurred with their consent up to the date of such refusal, and then only up to the Limit of Indemnity stated in the Schedule.

- [e] The **Assured**, as a condition precedent to their right to indemnity under this Policy, shall not, except insofar as may be required by law, disclose to anyone the existence of this Policy without Underwriters' prior written consent. For the avoidance of doubt, a requirement to disclose the existence of this Policy is not a requirement to disclose its terms and conditions.

3. **Employee Indemnification**

If the **Assured** so requires, Underwriters will indemnify any **Employee** of the **Assured** against his liability to pay any **Claim** made against that **Employee** personally, and necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any such **Claim** to the same extent as if the **Claim** were made against the **Assured** and subject to the terms, limitations, exclusions and conditions of this Policy, provided always that such **Employee** shall observe, fulfil and be subject to all the terms, conditions and exclusions of this Policy as if he were the **Assured**, and provided also that this Condition shall not increase the Limit of Indemnity under this Policy, and provided also that the **Employee** does not have any direct or indirect financial interest in the proceeds of the **Claim** and has not made any profit or gain out of the transaction giving rise to the **Claim**.

4. **Subrogation**

Underwriters shall be subrogated to all the **Assured's** rights of recovery against any person before or after any payment or indemnity under this Policy and the **Assured**, as a condition precedent to their right to indemnity under this Policy, shall take all steps necessary to preserve Underwriters' rights of subrogation and shall give all such assistance in the exercise of rights of recovery as Underwriters may require.

Underwriters agree not to exercise any such rights against any **Director, Member** or **Employee** of the **Assured** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that **Director, Member** or **Employee**.

5. **Fraudulent Claims**

If the **Assured** shall make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this Policy shall be void and all payment and indemnity hereunder shall be forfeited.



6. Unintentional Non-disclosure Clause

Underwriters will not exercise their right to avoid this Policy or any contract of insurance herein or claim to be discharged from any liability hereunder, on the grounds of any alleged non-disclosure or misrepresentation of facts or alleged untrue statements in the Proposal Form or in any other information which may have been supplied, provided that:

- (a) the **Assured** shall establish to Underwriters reasonable satisfaction that such alleged non-disclosure, misrepresentation or untrue statement was free of any fraudulent conduct or intent to deceive;
- (b) the **Premium** and terms shall be adjusted at Underwriters' discretion to those which would have applied had such circumstances been disclosed;
- (c) where the **Assured** should have notified such circumstances under any previous insurance (whether with other Underwriters or Insurers or not) the indemnity hereunder shall be limited to the indemnity which would have been available under the earliest such previous insurance if such circumstance had been properly notified;
- (d) where the **Assured** should have notified such circumstances under this Policy prior to obtaining any increase in the limit of indemnity hereunder or variation in the terms hereof the indemnity hereunder shall be limited to the indemnity which would have been available prior to such increase in cover or variation of the terms hereof.

7. Breach of Condition

Where the **Assured's** breach of or non-compliance with any Condition of this Policy has resulted in prejudice to Underwriters

- (a) in the handling or settlement of any **Claim** against the **Assured**[®]
- (b) in the amount of any loss sustained by the **Assured**
- (c) in the obtaining of reimbursement from any dishonest or fraudulent person

the indemnity afforded hereunder (including liability for claimant's costs) shall be reduced to such sum as in Underwriters reasonable opinion would have been payable by them in the absence of such prejudice.

8. Premium Payment

If the **Premium** has not been paid within 60 days of inception, Underwriters may cancel this Policy by giving 15 days written notice to the **Assured** or to the Broker. In the event of cancellation, premium is due to Underwriters on a pro rata basis for the period that Underwriters were on risk but the full **Premium** shall be payable in the event of notification of a **Claim** or of any circumstances before the effective date of termination. If the **Premium** is paid in full to Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

9. Third Party Rights

The parties to this Policy are Underwriters and the person or entity named as the **Assured** in the Schedule. A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available other than by virtue of the Act.

10. Proposal Form

The **Proposal** is the basis of this Policy and is incorporated herein.

11. Law Of Contract

This Policy shall be governed by the laws of England and Wales and any dispute in connection herewith shall be submitted to the exclusive jurisdiction of the English Courts.

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Notice Complaints

If at any time you have any questions or concerns regarding this Policy or the handling of a **Claim**, you should in the first instance refer to your insurance broker or intermediary, if any. If your problem cannot be resolved in this way, please write to the Claims Manager, Professional Liability Division, Markel International Limited, The Markel Building, 49 Leadenhall Street, London, EC3A 2EA. We will advise you of Markel's internal complaints handling procedure, which applies to both underwriting entities in the Markel International Group, Markel Syndicate 3000 at Lloyd's and Markel International Insurance Company Limited.

If you are still unable to resolve the situation, and are insured with Markel Syndicate 3000, and wish to make a complaint you can do so at any time by referring the matter to the Complaints Department at Lloyd's. Their address is Complaints Department, Lloyd's, One Lime Street, London, EC3M 7HA; Tel: 020 7327 5693; Fax: 020 7327 5225; e-mail: Lloyds-Regulatory-Complaints@Lloyds.com

Complaints that cannot be resolved by our internal complaints handling procedure or by the Complaints Department at Lloyd's may be referred to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.

These complaints procedures do not effect your right to have recourse to legal action or to any other remedy available to you.

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