



Excess Layer
Professional Indemnity Insurance
Policy Wording

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Introduction

to your Professional Indemnity Policy

This document and its attachments form your Policy and between them set out what is and isn't covered by your Policy. It is important that you read it all carefully, to make sure that the insurance covers you've bought actually provide the level of protection you need. You should bear in mind that your needs can change over time as your Business develops. If they do, it's important that you let your broker, intermediary or agent know so that we can update your Policy.

If you require advice on any aspect of your Policy please speak to your usual insurance adviser.

How to make a claim

Notice to the Company under Clauses 2.1.1 and 2.1.2 shall be deemed to have been properly made if received in writing by:

Barbican Protect Ltd - Claims

King's House
42 King Street West
Manchester
M3 2NU

Telephone: +44 (0)161 838 6998
Out of Hours: +44 (0)161 838 4389
E-mail: claims@barbicanprotect.com

Who we are

Barbican Protect Ltd is authorised and regulated by the Financial Conduct Authority under reference number 467933, and is registered in England No.6185834 at 33 Gracechurch Street, London EC3V 0BT.

Complaints Procedure

We of course aim to provide first class service. However if the Insured feels that the Company's service has fallen short of their expectation the Insured may contact the Company at any time with their complaint.

Complaints will be handled in the following way:

- if you make a complaint we will acknowledge it within 2 working days of having received it
- our objective will be to resolve your complaint within 5 working days.

If you have any questions or concerns about your policy or the handling of a claim or if you wish to make a complaint, you can do so at any time by referring the matter to: William Hall, Barbican Protect Limited, Barlow House, Minshull Street, Manchester M1 3DZ; T: +44(0)161 235 6540.

In the event that you remain dissatisfied, it may be possible in certain circumstances for you to refer the matter to the Complaints team at Lloyd's.

Their address is:

Complaints

Lloyd's

One Lime Street
London EC3M 7HA

Tel No: +44 (0)20 7327 5693

Fax No: +44 (0)20 7327 5225

E-mail: complaints@lloyds.com

Website: www.lloyds.com/complaints

Details of Lloyd's complaints procedures are set out in a leaflet 'Your Complaints - How We Can Help' available at www.lloyds.com/complaints and are also available from the above address.

If you remain dissatisfied after Lloyd's has considered your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The Financial Ombudsman Service is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find more information on the Financial Ombudsman Service at www.financial-ombudsman.org.uk.

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation from the Scheme in the unlikely event that we cannot meet our obligations to you. This depends upon the type of insurance, size of the business and circumstances of the claim. You can find out more at www.fcsc.org.uk.

Data Protection Notice

The Company is a Data Controller and will process personal information in accordance with the Data Protection Act 1998. By submitting personal information about you (and others), you (and they) consent to it being used for the purposes described in this Data Protection Notice.

The information supplied by the Policyholder may be:

- used for insurance administration including underwriting and claims services, debt collection, offering renewal, research and statistical analysis by the Company, its associated companies and agents, by other participating insurers, suppliers and your insurance intermediary
- used for management information purposes including portfolio assessment, risk assessment, performance and management reporting
- disclosed to regulatory bodies for monitoring and/or enforcing the Company and other participating insurers' compliance with regulatory rules and codes of conduct
- shared with other insurers either directly or via those acting for them such as loss adjusters, surveyors and investigators provided to, shared with and checked against various databases, credit reference agencies, fraud prevention agencies and public bodies including the police when the Policyholder applies for, renews or amends this insurance or makes a claim.

We may tell you about related products and services which are provided by the Company or by other associated companies. If you do not wish to receive marketing material from either category of company outlined here, please write to us stating your preference.

In the event of the Company being merged with, being taken over by, or transferring any part of its business to another company, we reserve the right to transfer your personal information to that company under these terms. You should show this notice to anyone whose personal data may be processed to administer this policy.

Policy Contract

In consideration of the Insured having paid or agreed to pay the premium stated in the Schedule the Company agrees to indemnify the Insured or otherwise to pay the benefits and compensations stated to the extent and in the manner specified in this Policy.

Provided that

- 1 the Policyholder shall be subject to all the terms, conditions limitations and/or exclusions contained in this Policy or by additional endorsements
- 2 the Company's liability shall not exceed the sums insured or the limits of liability or any other limits expressed herein
- 3 the Schedule, general definitions, general claims conditions, general conditions, general exclusions and active covers shall be read together as part of one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning throughout this Policy
- 4 the information supplied by or on behalf of the Insured is relied upon as to its completeness, correctness and accuracy by the Company. This means that if the information the Insured gives is incomplete, incorrect or inaccurate then the Insured may not be covered for any claim.

If this Policy is in the joint names of more than one Insured, each Insured shall be covered as if it had made its own application for cover and no statement or knowledge of any one Insured shall be considered to be on behalf of any other Insured.

Several Liability

This Policy is underwritten by certain underwriters at Lloyd's and/or other insurance companies (hereinafter called them "Insurers"). The liability of Insurers under this contract is several and not joint. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or in the case of a Lloyd's syndicate the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the Schedule. Where the insurer is a Lloyd's syndicate each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that members proportion. A member is not jointly liable for any other members proportion. Nor is any member responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyds syndicate and their respective proportion may be obtained by writing to Market Services at the above address.

Although reference is made at various points in this clause to "this contract" in the singular where circumstances so require this should be read as a reference to contracts in the plural.

Interpretation

In this Policy:

- 1** reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception, or subsequent renewal or alteration, of this Policy;
- 2** if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- 3** the headings herein are for reference only and shall not be considered when determining the meaning of this Policy;
- 4** the singular includes the plural and vice versa;
- 5** the male gender includes the female and neutral genders.

Insuring Clauses

In consideration of the payment or the promise of payment to the Company of the premium specified in the Schedule the Company agrees:

- 1.1** To indemnify the Insured in the terms of the Primary Policy (except as stated herein to the contrary) in respect of Claims made against the Insured and notified to the Company during the Period of Insurance, which arises out of the conduct of Professional Business by the Insured, and/or by others acting on behalf of the Insured, in excess of the Underlying Insurance Limit.

Claims Conditions

The following claims conditions apply to this insurance:

2.1 Notification

2.1.1 The Insured shall give notice to the Company as soon as practicable:

- a. of any Claim made against them or any of them; and
- b. regardless of any previous notice, of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings; and
- c. of the receipt of notice from any party of an intention to make a Claim against them; and
- d. any Circumstance

if it appears that such Claim or Circumstance is likely to exceed 50% of the Underlying Insurance Limit.

In the event that the Company is notified during the Period of Insurance of any Circumstance then any subsequent Claim which arises directly out of the Circumstance, shall be deemed to have first been made against the Insured during the Period of Insurance.

For the avoidance of doubt, notice under this Policy is not valid if given by any third party (other than the Insured's insurance agent acting on the Insured's instructions). Notice to the Company under this Condition or any other provision of this Policy is effective only when received in writing by the entity listed in Clause 2.1.2.

Any notice under this clause must identify:

- a. all potential claimants;
- b. the potential act error or omission;
- c. the date of the potential act error or omission.

2.1.2 Notice to the Company under Clauses 2.1.1 shall be deemed to have been properly made if received in writing by:

Barbican Protect Ltd - Claim
King's House
42 King Street West
Manchester
M3 2NU

Telephone: +44 (0)161 838 6998

Fax: +44 (0)161 838 4389

Email: claims@barbicanprotect.com

2.2 Recoveries

All recoveries or payments recovered or received subsequent to a loss settlement under this insurance will be applied as if recovered prior to such settlement and all necessary adjustments will then be made between the Insured and the Company, provided always that nothing in this insurance will be construed to mean that loss settlements under this insurance are not payable until the Insured's ultimate net loss has been finally ascertained.

2.3 No settlement without the Company's consent

Should the Insured at any time admit or negotiate or settle or promise to pay any Claim made against it without having first obtained the Company's written consent then the Company will be under no liability to indemnify the Insured in relation to that claim.

2.4 Duty to co-operate

The Insured undertakes to promptly provide to the Company full details concerning any Claim and any Circumstance and provide such co-operation and assistance as the Company and its representatives, legal advisers or agents may require. The Insured further undertakes that the Insured and all Employees (and all persons, Practices and companies acting for or on behalf of the Insured) shall ensure that all documents that may be relevant to all Claims and all Circumstances that may give rise to a Claim shall not be intentionally destroyed or otherwise intentionally disposed of.

Should the Insured fail to abide by these undertakings with the result that the Company suffers prejudice then the amount that is paid in settlement of a claim will be reduced by an amount which reflects the loss or cost or the additional loss or cost to the Company occasioned by such prejudice.

2.5 Discharge of liability

If the Insured declines to enter into any compromise or settlement recommended by the Company then the Company's liability under this Policy shall be limited to the amount for which the Claim could have been settled or compromised at the date at which the Company reasonably considers the Claim should have been settled or compromised, subject always to the Limit of Indemnity.

General Conditions

The following general conditions apply to this insurance:

3.1 Premium Payment Condition

3.1.1 Premiums payable in full:

In consequence of the Insured having agreed to pay the Premiums due under this Policy in full, it is hereby agreed and declared that:

- a. The Premium for this insurance is to be paid to Barbican Protect Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Barbican Protect Limited shall be deemed to be the Company's agent.
- b. In the event of the Premium, in full or in part, remaining outstanding for more than 30 days after the due date (whether demanded or not) Barbican Protect Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- c. Upon the lapsing of the Policy under paragraph (b) above, the Insured shall forthwith deliver up to Barbican Protect Limited any certificate of insurance, cover note, Policy document or any other such document or evidence concerning the existence of this Policy for amendment and shall forthwith communicate the lapsing of the Policy to any person who had been notified of its existence.
- d. The late acceptance of Premium after the 30 days specified in paragraph (b) above shall not reinstate the Policy unless expressly agreed by Barbican Protect Limited in writing and then only on such terms as shall be determined by the Company.

3.1.2 Premiums payable by instalments:

In consequence of the Insured having applied for the facility to pay the Premiums due under this Policy by instalments, it is hereby agreed and declared that:-

- a. The Premium for this insurance is to be paid to Barbican Protect Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Barbican Protect Limited shall be deemed to be the Company's agent.
- b. Each instalment or Premium will be paid under this Policy in full and the Insured shall not be entitled to deduct therefrom any sums which may be or may be alleged to be owing to the Insured by the Company and/or Barbican Protect Limited, whether in respect of this insurance or otherwise.
- c. In the event of an instalment remaining outstanding for more than 30 days after the due date (whether demanded or not) Barbican Protect Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- d. Upon the lapsing of the Policy under paragraph (c) above, the Insured shall forthwith deliver up to Barbican Protect Limited any certificate of insurance, cover note, Policy document or any other such document or evidence concerning the existence of this Policy for amendment and shall forthwith communicate the lapsing of the Policy to any person who had been notified of its existence.
- e. The late acceptance of Premium after the 30 days specified in paragraph (c) above shall not reinstate the Policy unless expressly agreed by the Company in writing and then only on such terms as shall be determined by the Company.

For the purposes of this endorsement it shall be deemed that credit facilities may be provided to the Insured by Barbican Protect Limited or a finance company or a bank.

3.2 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Policy has no rights under the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof to enforce any term of this Policy. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

3.3 Limit of Indemnity

The limit of indemnity stated in the Schedule is the Company's monetary limit and applies to any one Claim.

All Claims against any one or more of the Insured arising from any of the following:

- a.** one act or omission
- b.** one series of related acts or omissions
- c.** the same act or omission in a series of related matters or transactions
- d.** similar acts or omissions in a series of related matters or transactions
- e.** one matter or transaction

will be regarded as one Claim. All such Claims will be considered first made on the date upon which the earliest Claim is first made.

3.4 Policy Disputes and Governing Law

3.4.1 This Policy shall be governed by and construed in accordance with the laws of England and Wales.

3.4.2 The Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suits, actions, proceedings and to settle any disputes that may arise out of or in connection with this Policy.

3.4.3 Any dispute or difference between the Insured and the Company arising from this Policy shall be referred to Queen's Counsel to be mutually agreed between the Company and the Insured or any other party as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council shall appoint a suitable party.

The findings of the agreed or appointed party shall be binding on the Company and the Insured, and the costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

3.5 Underlying Policy

3.5.1 Liability under this insurance shall not attach unless and until the insurers of the Primary Policy and/or Underlying Excess Policy(ies) shall have paid and/or have admitted liability and/or have been held liable to pay, the full amount of their Limit of Indemnity.

3.5.2 It is a condition of this insurance that the Primary Policy and/or Underlying Excess Policy(ies) shall be maintained in full force and effect during the currency of this insurance.

3.5.3 Except as otherwise provided in this insurance, this insurance is subject to the same terms, exclusions, conditions and definitions as the Primary Policy and/or Underlying Excess Policy(ies). No amendment to the Primary Policy and/or Underlying Excess Policy(ies) during the Period of Insurance, in respect of which the insurers of the Primary Policy and/or Underlying Excess Policy(ies) require an additional premium or an excess, will be effective in extending the scope of this insurance, until the Insured has obtained the prior written agreement of the Company.

3.6 Fraudulent Claims

If the Insured makes any claim knowing same to be false or fraudulent, as regards amount or otherwise, this insurance will become void and all claims made after the date of the false or fraudulent action will be forfeited.

3.7 Step Down

If by reason of payment of any Claim by the insurers of the Primary Policy and/or Underlying Excess Policy(ies), during the Period of Insurance, the Underlying Insurance Limit is:

- a.** partially reduced, then this insurance will apply in excess of the reduced amount of the Underlying Insurance Limit for the remainder of the Period of Insurance; or
- b.** totally exhausted, then this insurance will continue in force as the Primary Policy, until expiry of the Period of Insurance.

Exclusions

The Company shall not have any liability under this Policy for, or directly or indirectly arising out of, or in any way involving:

4.1 Previous Claims and Circumstances

any Claim or Circumstance which has been notified under any other policy or certificate of insurance attaching prior to the inception of this insurance.

4.2 Retroactive Date

as a consequence of the conduct of Professional Business prior to the retroactive date specified the Schedule.

4.3 Terrorism

any Terrorism (regardless of any other cause or event contributing to the liability) or any action taken in controlling, preventing or suppressing Terrorism. If the Company alleges that by reason of this exclusion any liability is excluded the burden of proving to the contrary shall be on the Insured.

4.4 USA/Canada

any Claim which is brought in the United States of America or Canada or which arises from the conduct of Professional Business carried out from any office or other premises situated in the United States of America or Canada.

4.5 War

any war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or 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.

4.6 Sanctions Limitations

The Company shall not be deemed to provide cover and the Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America

General Definitions

The following General Definitions shall apply to this Policy and that wherever these words appear within the wording starting with a capital letter shall bear the same meaning throughout the Policy other than where specifically stated.

5.1 “Circumstance(s)”

shall mean a situation which may give rise to a Claim.

5.2 “Claim(s)”

shall mean(s) demand(s) (including Claimants’ costs) by a Claimant for compensation or damages from, or the assertion(s) of a civil right or rights against, any Insured and shall be deemed to include any complaint(s) or reference(s) to any ombudsman which arises out of the conduct of Professional Business carried on by, or on behalf of, the Insured.

5.3 “Company”

shall mean the insurance company or insurance companies and/or Lloyd’s syndicates subscribing to this Policy and named in the Schedule for their indicated proportion.

5.4 “Defence Costs”

shall mean legal costs and expenses incurred by or on behalf of the Insured only with the prior written and continuing consent of the Company. It does not include the Insured’s own costs and expenses.

5.5 “Employee(s)”

shall mean person(s), other than a partner, Member, principal or director of the Insured who is under a contract of service or apprenticeship, supplied to, hired or borrowed by the Insured, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the Insured in connection with the conduct of Professional Business by the Insured.

5.6 “Insured”

shall mean each and all of the following persons, each of whom shall be severally insured hereunder:

- a. Those persons named in the Proposal as partners or directors or Members of the Practice (or named as the principal where the Practice is a sole practitioner) and any other person who may at any time during the Period of Insurance become a partner or director or Member in the Practice;
- b. Any former partner or director or Member of the Practice including any such former partner or director or Member whilst acting as a consultant to the Practice;
- c. Any person who is or has been under a contract of service with the Practice;
- d. Any person who is or has been under a contract of service with a Member save that such person shall only be an Insured for the purpose of this Policy if and insofar as any Claim arises out of Professional Business carried on by such person for or on behalf of the Practice named in the Schedule;
- e. The estates and/or legal representatives of any Insured Person noted under (a), (b), (c) or (d) hereof in the event of death, incapacity, insolvency or bankruptcy;
- f. Any company or limited liability partnership named as the Insured in the Schedule.

“Member(s)”

shall mean any person who is or has been under a contract of service with the Insured in connection with the conduct of Professional Business by the Insured.

5.8 “Period of Insurance”

shall mean period stated in the Schedule (and for such other period as may be mutually agreed).

5.9 “Practice”

shall mean the practice or practices named as the insured in the schedule and their predecessors and any other practices which are disclosed to the Company in the Proposal.

5.10 “Premium”

shall mean total amount stated in the Schedule plus Insurance Premium Tax (or other appropriate tax) at the rate from time to time in force.

5.11 “Primary Policy ”

shall mean the first professional indemnity insurance policy effected by the Insured or any policy in substitution or renewal thereof for the same limit of indemnity.

5.12 “Professional Business ”

shall mean the business activities which are listed in the Schedule.

5.13 “Proposal”

shall mean all the information supplied to the Company (whether by written, electronic or any other means) which it is hereby agreed is relied upon by the Company.

5.14 “Schedule”

shall mean document entitled “Schedule” that relates to this Policy.

5.15 “Terrorism”

shall mean 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) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.

5.16 “Underlying Insurance Limit”

shall mean the total of the limits of indemnity provided by the Primary Policy and the Underlying Excess Policy(ies).

5.17 “United States of America and Canada”

shall mean the United States of America and Canada and in each case its territories and possessions and any state or political sub-division thereof.