



Professional Indemnity

Primary Layer: Markel International Insurance Company (50%)
Berkshire Hathaway Insurance Company (50%)

Policy Number: B1262 FI1931624

Limit of Liability: £5m (any one claim and in the aggregate)

Excess Layer: Tokio Marine HCC Insurance Company

Policy Number: B1262FI1931624

Limit of Liability: £5m in excess of £5m (any one claim and in the aggregate)

Policy Period: 1 June 2024 to 31 May 2025

Professional Indemnity provides legal liability cover for the University following a financial loss incurred by a third party(ies) resulting from an error, omission, breach of duty (Wrongful Act), or professional negligence in the supply of advice, consultancy, or design by the University.

An 'indemnity' is a contractual commitment by one party to make good any specified loss, damage or injury suffered by the other party. It is a commitment by a party to cover the liability of another party.

The common law position is that:

Where a party is in breach of the contract or behaves negligently, the other party has a right to claim for losses or damage that it can prove were caused by the first party's breach of contract or negligence.

In English law, parties to a contract will not always recover all of their losses – the loss or damage claimable generally must have flowed directly as a consequence of the breach of contract or negligence. It is up to the party claiming the loss or damage to show that the loss or damage was not too remote. This means that even if it is shown the third party's breach caused the loss, if that loss was sufficiently unusual or unlikely, then they will not usually be liable for it unless they were aware of some special or unusual circumstances when they entered into the contract.

Cover Specifications

The policy provides cover for the legal liabilities of the University and its staff arising from:

- Negligent acts, errors or omissions by staff in the course of the University's activities
- Unintentional breach of third party intellectual property rights
- Loss or destruction of documents, including computer software
- Intellectual property rights
- Dishonest or fraudulent acts of employees
- Libel and slander
- Breach of confidentiality

Limit of Indemnity

- £10m any one claim and in the aggregate with costs inclusive

Section	Limits of Liability [❖]	Deductible [‡]
Professional indemnity	£10m any one claim and in aggregate	£10,000 / US\$25,000 for each and every claim

❖ The Limits of Liability are inclusive of the Deductible, interest and claimants' costs and expenses.

‡ The Deductible shall be eroded by any payment of Legal Costs.

Aggregate – the total the Insurers will pay for all covered losses sustained during the policy period.

Deductible

- £50,000 each and every claim excess
- £100,000 each and every claim in respect of claims arising directly or indirectly from discrimination
- £5,000 each and every student including costs and expenses in respect of claim arising directly or indirectly from Covid

Territorial / Jurisdiction Limits

Worldwide cover, except for countries with sanctions, embargoes or restrictions.

General Conditions

- 1 Round the Clock (“RTC¹”) Reinstatement
- Fraud and dishonesty exclusion
- Sexual molestation exclusion
- Cyber exclusion
- LMA 3100 Sanctions clause
- Financial advice exclusion
- Return on investment exclusion
- Fee and remuneration exclusion
- Clinical trial exclusion
- Medical malpractice exclusion
- Property damage / bodily injury exclusion in respect of property management and student accommodation services
- Excluding directly or indirectly any SRA Regulated work
- Excludes University of Manchester Press
- Small claims handling clause²

Exclusions

- Claims arising out of contractual liabilities that go beyond the duty to use such skill and care as is usual in undertaking the University’s activities
- Claims arising from certain work incorporated in aircraft or aerial devices
- Claims arising from the radioactive, toxic, explosive or other hazardous properties of any nuclear component
- Claims for fines, penalties, punitive or exemplary damages
- Claims in respect of medical malpractice
- Work or services undertaken outside the UK by an overseas domicile, unless this overseas risk is specifically agreed with the Insurers
- No cover in relation to any Professional Sportsperson who is currently, or has previously competed as a varsity player (individual or team), a professional player or a national or international player.
- No cover in respect of any liability, claim, loss, costs or expenses arising out of, caused by, and resulting from, in consequence of, in connection with or in any way involving:
 - a) access to, damage to or loss, destruction, erasure, corruption or alteration of electronic data
 - b) errors in creating, amending, entering, deleting or using electronic data
 - c) inability, delay or failure to receive, send, access, permit access or use electronic data
 - d) access to or disclosure of any personal or corporate information
 - e) hacking, cyber attack, virus, worm, spyware, trojan horse, phishing or malicious computer programme.
- No cover in respect of any liability, arising out of or related to, or in any way involving, either directly or indirectly:
 - a) any coronavirus disease (COVID-19);
 - b) any severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
 - c) any mutant, derivative or variation of COVID-19 or SARS-CoV-2;
 - d) any fear or threat, whether actual or perceived, of (a), (b) or (c) above;
 - e) any action taken to control, prevent, suppress, mitigate or in any way relating to any of (a), (b) or (c) above.

¹ On a “RTC” basis of cover when the limit on the primary policy is exhausted, the excess layer insurer ‘drop down’ to deal with claims, until its limit of indemnity is exhausted. Only when the whole limit is exhausted across the programme of insurance policy is the limit of indemnity reinstated, and at this point the primary insurer becomes the first port of call again.

² Ability to handle claims in house up to £25,000 (50% of excess) using the support services offered by BLM, DAC Beechcroft or VWV Solicitors, or UoM preferred legal partners / in-house lawyers. Potential claims falling within the £25,000 limit may be reported retrospectively by way of quarterly bordereau. All claims likely to exceed this £25,000 threshold will need to be reported and notified to the Insurers immediately.

Claim Procedures

1 Notification

Claims (and circumstances that might reasonably be expected to produce a claim) must be notified to insurers via the Insurance Office as soon as reasonably possible.

It is important to note that claims or circumstances should be notified irrespective of either views as to whether or not such claims will be successful, or the amount of the claim will exceed the policy excess. It is widely acknowledged that incidents that start small in scale can escalate over the longer term to more serious, and costly scenarios.

Claims contact details:

Markel (UK) Ltd & Berkshire Hathaway via Griffiths & Armour

Claims contact: gheron@griffithsandarmour.com / 0151 600 2155

swilliams@griffithsandarmour.com / 0151 600 2167

Failure to notify insurers early may result in no insurance cover for that incident or claim.

2 Information required

Insurers will expect reasonable assistance and evidence concerning the cause and value of any claim. This will enable insurers to make an initial evaluation of the claim. Other additional information may then be requested.

- Your name, university position/role, contact details
- Date when you become aware of the claim or circumstances
- The circumstances leading to a claim or potential claims
- Details of the claim together with the claim value, if known
- Names and address of any other parties involved or responsible for the claim
- Initial views on liability and whether the client/claimant has grounds for the claim
- Details about the potential size of any claim or loss suffered

3 Appointment of panel solicitors

Insurers have a panel of four solicitors that they will instruct where appropriate. These firms are BLM, Beale & Co, Kennedys and DAC Beachcroft. One of these firms would be appointed in all cases, unless there are exceptional circumstances, or where it can be assessed with some certainty that a claim will fall within the level of the excess.

4 Process of paying costs arising from PI claims and allegations

Insurers will pay defence costs incurred by you, but only in respect of those costs for which they have provided their written consent. You may be required to pay all costs where such consent is not provided.

Appendix A Guidance on Contract agreement if the University of Manchester is the supplier

The University Professional Indemnity policy provides worldwide coverage. The policy will accept different governing law provisions or jurisdiction provisions in contracts providing that we are or would be insured for the activity under the contract in the UK. If any of the activities are subjected to be sanctioned or embargoed, the policy will be invalid and provide no cover.

Governing law clause

The policy provides cover on the basis of the territorial limits and jurisdiction being worldwide. This means that the policy would respond to claims made against the University for any professional advice or work undertaken anywhere in the world and respond to claims brought through any legal system or courts, the exception being that payments could not be made where sanctions apply.

The policy will accept the following:

- A contract agreement which includes a governing law clause outside of the UK and EU
- A contract agreement which specifies the jurisdiction of particular court outside of the UK and EU
- A contract agreement with a reciprocal jurisdiction clause
- A contract agreement that is silent on the law that applies, i.e. no specification on the governing law applied

With regards to arbitration, the following top courts for arbitration have been agreed with the underwriters and are preferred.

- [International Court of Arbitration](#), Paris
- [London Court of International Arbitration](#)
- [Singapore International Arbitration Centre](#)
- [Hong Kong International Arbitration Centre](#)
- [Arbitration Institute of the Stockholm Chamber of Commerce](#)
- [American Arbitration Association](#), New York
- [Centre for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada](#), Sao Paulo

Contract signed by Overseas UoM Entities

If a contract agreement is signed 'in country' of service delivery by a UoM overseas entity for work to be undertaken in that country, individuals should seek local insurance to meet local regulations before signing the contract.

UK policy will not respond to any payment or claim arising from these contracts.

US/Canada Cover

The policy extends its cover to the US and Canada with the following limitation and exclusion:

- The excess is US\$25,000 for each and every claim
- It excludes cover for punitive or exemplary damage

Impact of certain contractual clauses

Hold Harmless – holding the other contracting party “harmless” in the event of a breach.

This can massively impact our ability to claim against the other party in the event of negligence and could result in both increased claims against our insurance policy, or the Insurers turning down claims or limiting future policy cover.

This could be useful clauses when both parties offer to hold each other harmless where it may be difficult to assess where liability may sit. In such circumstances the contract condition may state that the liability sits wherever the claim is made rather than establishing causation. However, this would require the insurers of both parties to confirm agreement to the condition in writing.

Waiver of Subrogation – waiving our rights to claim compensation from a negligent party for a loss that is deemed to be their responsibility.

This would cause substantial concern for the Insurers. Waiving our ability (and therefore the Insurers ability) to subrogate may invalidate the policy, or cause the Insurers concerns. This could also result in the claim sitting against the University loss experience, which would affect premium and success in seeking future cover.

Sanction clause

The policy excludes cover for any payment or claims to countries, organisations or individuals who are subject to sanctions, embargoes or restrictions. Before signing on any contract, individual and Contract Team should undertake a due diligence check to establish if the other party, including the individual, the organisation and the country that the University may be working with, is subject to any form of sanctions, embargoes or restrictions.

Appendix B Guidance on Contract agreement if the University of Manchester seeks suppliers

- a) It is important to ensure that the University's requirements are covered by suppliers/contractors and are stated in the contract agreement.
- Public and Product Liability (PL) – provides indemnity for legal liability to pay compensation for personal injury or property damage sustained by a third party which resulted from the negligence of suppliers/contractors.
 - Employers Liability (EL) – provides indemnity for legal liability to pay compensation for injuries sustained by employees of the suppliers/contractors which have resulted from their negligence or breach of statutory duty.
 - Professional Indemnity (PI) – provides indemnity for losses that the suppliers/contractors may become legally liable to pay as damages for financial loss incurred by the University resulting from an error or professional negligence.
- b) Liability Insurance policy (PL, EL and PI) has a limit of indemnity, which is the maximum amount the policy will pay out in respect of any one claim or series of claims resulting from any one event. Some policies limit the total amount payable in the “aggregate”, i.e. the total payable in any one annual period of cover. Given the application of such limits, it is important to ensure that a supplier/contractor or third party has an adequate level of cover on their liability insurance.
- c) When considering insurance clauses in a contract, it is important to ensure that:
- There is a requirement that the correct type of insurance is included
 - The level of indemnity is appropriate.

	Employers Liability	Public Liability	Professional Indemnity
The number of adults that could be injured		✓	
The number of children that could be injured		✓	
The type and number of employees that the contractor has working in any one place	✓		
The value of the building being worked on, visited, occupied or leased		✓	
The potential loss of income if a building is damaged		✓	
The potential financial loss if a supplier provided poor or incorrect advice			✓
The nature of and level of danger involved in the activity	✓	✓	
Where the activity is being undertaken, particularly if this is in public place		✓	

- d) An appropriate limit of indemnity will not be the same for all contracts or for all types of insurance. The nature of the contract and the levels of risk involved will have an influence, and decisions should be reached using risk based analysis. As a starting point, it would be prudent to assume the following as a minimum level of indemnity:
- i. Public Liability (PL) - £5 million
 - ii. Employers Liability (EL) - £5 million
 - iii. Professional Indemnity (PI) - £2 million

Factors that are not relevant to the level of indemnity include:

- The value of the contract
- The size of the organisation
- The fact that the organisation regards the supplier/contractor as a “partner”
- The quality of previous relationships
- The strength of references
- Any altruistic nature of the event

On rare occasions, there may be very exceptional circumstances in which these minimums are considered too high or are questioned by the supplier/contractor. In such circumstances, please refer to the Insurance Office for guidance.

- e) PI cover is principally required to protect suppliers who provide advice, consultancy or design. It is normally underwritten on a “claim made” basis, i.e. a policy is required to be in force when a claim is made, not when the erroneous advice (consultancy or design) is provided. Hence, it is important to check that insurance is in place for each year that the contract is in place plus a period after the contract ends.

It is recommended that the contract agreement should include a requirement for the supplier to purchase such cover for a period beyond the contract. In Construction matters, this is usually for 12 months but can be up to 6 years.

- f) The following areas are normally excluded within a standard liability policy, and additional insurance will be required if the work includes any of these areas of risk:
- i. Offshore work – generally excluded from Public Liability policies
 - ii. Asbestos – generally excluded from Public Liability policies
 - iii. Medical and healthcare risks – medical advice is generally excluded from standard Public Liability policies
 - iv. Motor, aviation and marine – these risks need to be identified separately and should be covered by motor, aviation or marine policies
 - v. Pollution (gradual) – sudden and unforeseen pollution may be covered as standard in CAR policy but should be discussed with the Insurance Office if this is considered as a potential risk
 - vi. Cyber and Data risks
 - vii. Use of heat – if this is not excluded in a CAR policy, then there are likely to be conditions relating to the use of heat. A contractor’s failure to follow those conditions may invalidate the cover which the University may be relying on.