

Accountants

Professional Indemnity Insurance Policy document



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Arachas Corporate Brokers Limited t/a Arachas, Capital Insurance Markets, Capital IM, Covercentre is regulated by the Central Bank of Ireland

ACCOUNTANTS PROFESSIONAL INDEMNITY

SECTION 1, PROFESSIONAL INDEMNITY – PRIMARY LAYER (PIARACHASACC01)

In consideration of the payment or the promise of payment of the premium specified in Item 7 of the Schedule, the Insurer agrees to provide insurance in accordance with the terms, conditions, exclusions and limitations of this policy:

I. PREAMBLE

A. Claims Made and Reported

Except as otherwise specified in III. Extensions B. Lost **Documents** and III. Extensions C. **Fidelity**, all under this policy is afforded solely in respect of:

1. **Claims** first made against an **Insured** during the **Policy Period**; and
2. circumstances that any **Responsible Person** first becomes aware of during the **Policy Period** that they reasonably expect will give rise to a **Claim**;

which are notified to the **Insurer** in accordance with VII. Claims Conditions B. Notification.

A **Claim** is deemed to be first made against an **Insured** only when any **Responsible Person** first receives notice of any **Claim**.

II. COVER

The **Insurer** will:

A. Professional Indemnity

pay on behalf of an **Insured** all **Loss** resulting from any **Claim** made against an **Insured** for a civil liability arising out of the conduct of the **Professional Services** (including but not limited to civil liability arising out of, based upon or attributable to any dishonest, fraudulent, criminal or malicious act of any **Insured Person**) provided by the **Insured**, or others acting for and/or on behalf of the **Insured** for whom the **Insured** are legally liable including;

1. consultants, designers or sub-contractors engaged by the **Firm** to perform **Professional Services** on behalf of the **Firm**; and
2. any **Employee** who has been seconded by the **Firm** to work elsewhere.

B. Defamation

pay on behalf of an **Insured** all **Loss** resulting from any **Claim** made against an **Insured** for defamation whether written or oral, committed or alleged to have been committed by an **Insured** arising out of the conduct of the **Professional Services**.

C. Defence Costs

pay all Defence Costs.

D. Ombudsman Awards

pay on behalf of the **Insured** all **Loss** resulting from a **Claim** in respect of any award or determination of any **Ombudsman** for which the **Insured** is legally liable which arises out of the conduct of the **Professional Services**.

III. EXTENSIONS

The **Insurer** will:

A. Court Attendance Costs

pay, providing the **Insurers'** prior written consent has been obtained, the following rates per day for each day on which attendance in court has been required for any person described in 1. and 2. below who actually attends a court or an arbitration or an adjudication hearing or an **Ombudsman** hearing as a witness in connection with a **Claim** or **loss** covered by this policy:

1. for any **Principal, Partner, Member** or director of the **Firm**: € 500 (or the equivalent in an alternative currency);
2. for any **Employee**: € 250 (or the equivalent in an alternative currency).

B. Lost Documents

indemnify the **Firm** for all costs and expenses incurred with the **Insurers'** prior written consent in replacing or restoring any **Documents** held in the course of the **Professional Services** which are the property of, responsibility of or in the custody of the **Insured** which have been destroyed, damaged, lost, distorted, erased or mislaid provided that:

1. such **loss** or damage to **Documents** has been:
 - i. sustained while the **Documents** are in the custody of an **Insured** or any person to whom an **Insured** has entrusted, lodged or deposited them in the ordinary course of their **Professional Services**, and
 - ii. **Discovered** by a **Responsible Person** during the **Policy Period**;
2. any lost **Documents** have been the subject of a diligent search by or on behalf of the **Firm**;
3. such **loss** or damage does not form part of a **loss** covered under II. Cover A. Professional Indemnity or III. Extensions C. **Fidelity**; and
4. the **Insurer** shall not be liable for any **loss** or damage arising out of, based upon or attributable to any wear, tear, gradual deterioration, moth or vermin.

C. Fidelity

indemnify the **Firm** for their **Fidelity Loss** sustained, arising from any dishonest, fraudulent, criminal or malicious act of any **Insured** Person provided that:

1. such **Fidelity Loss** is **Discovered** by a **Responsible Person** during the **Policy Period**;
2. no indemnity shall be afforded in respect of any dishonest, fraudulent, criminal or malicious act or omission of a person committed by such person after **discovery** by a **Responsible Person** of reasonable cause for suspicion of any dishonest, fraudulent, criminal or malicious act or omission on the part of that person however, cover shall continue to apply in respect of any **Fidelity Loss** arising as a result of property in the custody of such **Insured** Person at the time of **Discovery**.

Furthermore, no person committing or condoning any dishonest, fraudulent, criminal or malicious act or omission shall be entitled to indemnity.

IV. DEFINITIONS

A. Alternate

Alternate means any individual practitioner, **Partnership** or Limited Liability Partnership or company who or which is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.

B. **Approved Minimum Wording**

Approved Minimum Wording means the minimum approved professional indemnity wording for accountants as set out in the Regulations in force at the inception date of this policy specified in Item 2 of the Schedule and, for any renewal of this policy, at the date of such renewal.

C. **Claim**

Claim means the earliest of any:

1. written demand by a Third Party for compensation or similar financial restitution or the assertion of a right by a Third Party;
2. oral or written notice from a Third Party of an intention to pursue an action and/or legal proceedings;
3. arbitration proceeding commenced by a Third Party through the submission of a statement, **claim** or similar document;
4. formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
5. criminal proceeding commenced by a Third Party;

alleging a **Wrongful Act** or defamation.

D. **Claimant**

Claimant means each individual person, client, customer or entity. Where a **Claim** is made by an entity, including but not limited to a regulatory body on behalf of one or more individuals, persons, clients or customers of an **Insured**, **Claimant** means each such individual, person, client or customer to whom the **Insured** is liable and shall not mean the entity making the **Claim**. However, without prejudice to the foregoing, where a **Claim** is made by any entity acting solely in its own interest as a client or customer of an **Insured**, **Claimant** shall mean that entity.

E. **Damages**

Damages means any amount that an **Insured** shall be legally liable to pay to a Third Party in respect of judgments or arbitral awards rendered against an **Insured**, or for settlements negotiated by the **Insurer** with the consent of the **Policyholder** for a **Wrongful Act** or defamation.

F. **Defence Costs**

Defence Costs means reasonable fees, costs and expenses and disbursements incurred by or on behalf of an **Insured**, with the prior written consent of the Insurer, in the investigation, defence, adjustment, settlement or appeal of any Claim or any proceedings relating to a Claim, such consent not to be unreasonably withheld or delayed.

Defence Costs shall not include:

1. costs covered under III. Extensions A. Court Attendance Costs; or
2. any other element of an **Insured's** own time costs or lost profits incurred in dealing with a **Claim** or **Fidelity Loss**.

G. **Discovered and Discovery**

1. **Applicable to III. Extensions B. Lost Documents only**

Discovered and **Discovery** means when any **Responsible Person** first becomes aware of or has any knowledge of any **loss** of the type covered under III. Extensions B. Lost **Documents** even though the exact amount or details are not known at the time of **Discovery**.

2. **Applicable to III. Extensions C. Fidelity only**

Discovered and **Discovery** means when any **Responsible Person** first becomes aware of or has any knowledge of any **Fidelity Loss** or any act, omission or event that they reasonably expect will give rise to a **Fidelity Loss** covered under III. Extensions C. **Fidelity** even though the exact amount or details are not known at the time of **Discovery**.

H. Documents

Documents means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency or negotiable instruments.

I. Employee

Employee means any natural person who is, has been or during the **Policy Period** becomes expressly engaged under a contract of service with the **Firm**.

Employee shall also include any:

1. person provided to the **Firm** under the terms of a work experience agreement or similar scheme;
2. voluntary worker; or
3. person who is supplied to, hired, borrowed or temporarily seconded to the **Firm**;

performing work under the control and supervision of the **Firm**.

Employee shall not include any **Principal, Partner, Member** or director of any **Insured** in their capacity as such.

J. Excess

Excess means the applicable amount specified in Item 4 of the Schedule.

K. Fidelity Loss

Fidelity Loss means **loss** of money, securities or property owned or leased by the **Insured** in connection with their **Professional Services**.

Fidelity Loss shall also include any investigation expenses (including accountants fees) incurred by the **Insured**, with the **Insurers** prior written consent, to substantiate the amount of any **loss** covered under III. Extensions C. **Fidelity**.

L. Firm

Firm means the **Policyholder** and any **Subsidiary** (including any predecessor business of such **Policyholder** or **Subsidiary**).

M. Insured

Insured means:

1. the **Firm**; and
2. any **Insured** Person.

N. Insured Person

Insured Person means:

1. any natural person who is, or has been, or during the **Policy Period** becomes a **Principal, Partner, Member** or director of the **Firm** in their capacity as such;
2. any former **Principal, Partner, Member** or director of the **Firm** whilst acting as a consultant to the **Firm**;
3. any **Employee**;

4. the estate or legal representative of any deceased or legally incapacitated person in 1 – 3 above but only in respect of any act, error, omission or event committed or alleged to have been committed by such person in 1 – 3 above; and
5. any person who is acting on behalf of the **Firm** as an “**Alternate**”.

O. Insurer

Insurer means those **Insurer(s)** listed in Item 9 of the Schedule.

P. Legal Panel

Legal Panel means any firm or panel of solicitors appointed from time to time by Leeson Claims Services (LCS Ireland) or by the **Insurer** to provide representation on behalf of an **Insured** under this policy.

Q. Limit of Liability

Limit of Liability means the applicable amount specified in Item 3 of the Schedule.

R. Loss

Loss means in respect of:

1. II. Cover A. Professional Indemnity and II. Cover C. Defamation only

- i. Damages; and
- ii. **Claimants** costs and expenses.

2. II. Cover D. Ombudsman Awards

the cost of any monetary award or a direction or recommendation to do something which results in the payment of money to a complainant Third Party, including **Claimants** costs, expenses and disbursements.

Loss shall not include any:

- i. taxes;
- ii. a. non-compensatory damages or punitive, multiple or exemplary damages;
b. fines or penalties
except:
 1. exemplary damages for defamation;
 2. the cost of any monetary award, direction or recommendation covered under II. Cover D. Ombudsman Awards; and
 3. any other of a. or b. above where insurable by law;
- iii. the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- iv. benefits or overheads of, or charges or expenses incurred by any **Insured** for the cost of any **Insured's** time except as provided under III. Extensions A. Court Attendance Costs;
- v. fees or commissions for any **Professional Services** rendered or required to be rendered by an **Insured** or that portion of any settlement or award in an amount equal to such fees or commissions;
- vi. matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a **Claim** is brought.

S. Member

Member means a member of a partnership as determined by the Limited Liability Partnership Act 2000 and any subsequent amendment thereto or the equivalent in any other jurisdiction.

T. Ombudsman

Ombudsman means any **ombudsman** appointed pursuant to the provisions of:

1. the Financial Services and Markets Act 2000; or
2. the Central Bank and Financial Services Authority of Ireland Act 2004

or any amendment or re-enactment thereof.

U. Partner

Partner means a partner of a **Partnership**.

V. Partnership

Partnership means an unincorporated entity in which persons are or are held out as **Partners**.

W. Policy Period

Policy Period means the period of time specified in Item 2 of the Schedule.

X. Policyholder

Policyholder means the entity specified as such in Item 1 of the Schedule.

Y. Pollutants

Pollutants means any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including but not limited to, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, recycled, reconditioned or reclaimed materials.

Pollutants shall not include asbestos.

Z. Principal

Principal means where the **Insured** is or was a sole practitioner - that practitioner.

AA. Professional Services

Professional Services means the **Professional Services** and activities as specified in Item 5 of the Schedule and outlined in the **Submission**.

BB. Regulations

Regulations means the Professional Indemnity Insurance Regulations and Guidance issued by the Institute of Chartered Accountants in England & Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland (as applicable).

CC. Related Claim

Related Claim means any **Claims** alleging, arising out of, based upon or attributable to:

1. the same facts;
2. the same alleged facts;
3. the same circumstances;
4. the same **Wrongful Act** or defamation; or
5. a continuous or related **Wrongful Act** or defamation.

All **Related Claims** shall be deemed to be one single **Claim**.

Where an **Ombudsman** makes an award or determination which is rejected by the **Claimant** who then pursues the matter through the courts, both the complaint to the **Ombudsman** and all subsequent court proceedings shall be treated as a single **Claim** made at the date of the first **Claim** against the **Insured**.

DD. Related Fidelity Loss

Applicable in respect of III. Extensions C. Fidelity only

Related **Fidelity Loss** means any **Fidelity Loss** attributable to the acts or omissions of one or more persons acting in concert, or in which such person(s) is concerned or implicated or, if there are no such acts or omissions, all **loss** or **losses** attributable to the same event or series of related events.

All Related **Fidelity Losses** shall be deemed to be one single **Fidelity Loss**.

EE. Responsible Person

Responsible Person means any **Principal, Partner, Member** or director of the **Policyholder**.

FF. Retroactive Date

Retroactive Date means the date specified in Item 6 of the Schedule.

GG. Submission

Submission means the signed proposal form or any other form of underwriting submission, its attachments and all other material information submitted to the **Insurer** in respect of this **Policy Period**.

HH. Subsidiary

Subsidiary means any entity in which the **Firm**, either directly or indirectly through one or more entities:

1. controls the composition of the board of directors;
2. controls more than half of the voting power;
3. holds more than half of the issued share capital.

Subsidiary shall automatically include any entity acquired or created on or after the inception of the **Policy Period** specified in Item 2 of the Schedule that meets any one or more of the criteria outlined in 1 – 3 above where such entity, at the date of acquisition or creation by the **Firm**:

- i. had an annual revenue for the last complete accounting period prior to the acquisition, of less than 20% of the total revenue of the **Firm** declared in the Submission;
- ii. is not incorporated, domiciled or provided **Professional Services** in the United States of America or any of its territories;
- iii. is not regulated by the US Securities and Exchange Commission;
- iv. has not incurred any **loss** of the type covered by this policy with a quantum greater than the largest **Excess** stated in Item 4 of the Schedule during the past five years of operating as a business; and
- v. carries out any of the business activities which fall within the definition of **Professional Services**.

If such entity does not meet the criteria in i. – v. above, such entity will not be automatically covered. If the **Policyholder** requires cover to be extended to include such entity, the **Policyholder** shall give the **Insurer** sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure. The **Insurer** shall have the right, but not the duty, to offer cover for such an entity. In the event that coverage is provided, the **Insurer** shall be entitled to amend the policy terms and conditions in respect of such entity, including but not limited to, charging a reasonable additional premium.

Unless otherwise agreed by the **Insurer**, cover shall only apply in respect of any actual or alleged act, error, omission or events which occur on or after the date such entity was acquired or created by the **Firm**.

II. Terrorism

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.

JJ. Third Party

Third Party means any entity or natural person except:

1. any **Insured**;
2. any other entity or natural person having a financial interest or executive role in the operation of the **Firm**.

Third Party shall include 1. and/or 2. above (as applicable) in circumstances where a **Claim** has been made for an indemnity or contribution by 1. and/or 2. above and such **Claim** was made by an independent third party.

KK. Wrongful Act

Wrongful Act means any actual or alleged act, error or omission arising out of the conduct of the **Professional Services**.

Wrongful Act does not include defamation if such **Loss** is covered under II. Cover B. Defamation.

LL. Financial Service

Financial Services means investment advice including but not limited to personal pensions, endowments, bonds, mortgages, unit trust, savings and pension scheme advice.

V. EXCLUSIONS

Applicable To Section II. Cover and Section III. Extensions except III. Extensions B. Lost Documents and III. Extensions C. Fidelity

This policy shall not cover any Claim or Defence Costs:

A. Asbestos

arising out of, based upon or attributable to the actual or alleged discharge, dispersal, release or escape of any asbestos.

B. Bodily Injury/ Property Damage

arising out of, based upon or attributable to:

1. physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury; or
2. damage to or **loss** of or destruction of tangible property or **loss** of use thereof;

This exclusion shall not apply to any Claim or Defence Costs arising out of the conduct of the **Professional Services**.

C. Dishonest, Fraudulent, Criminal or Malicious Acts or Omissions

arising out of, based upon or attributable to any dishonest, fraudulent, criminal or malicious act or omission of a person committed by such person after **discovery** by a **Responsible Person** of reasonable cause for suspicion of any dishonest, fraudulent, criminal or malicious act or omission on the part of that person. Furthermore, no person committing or condoning any dishonest, fraudulent, criminal or malicious act or omission shall be entitled to indemnity.

Notwithstanding the foregoing, the above shall not operate to discharge the Insurers liability to pay costs in accordance with VII. Claims Conditions H. Payment of Costs.

D. Employment Practice Violation

arising out of, based upon or attributable to any:

1. act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective employee of any company; or
2. actual or alleged breach of the **Insured's Partnership, membership** or shareholder contract, agreements or arrangements.

E. Express Warranty or Guarantee

arising out of, based upon or attributable to any express warranty (except warranty of authority) or guarantee unless liability would have attached to the **Insured** in the absence of such express warranty or guarantee.

F. Financial Return

arising out of any express or implied warranty or guarantee made by an **Insured** relating to the financial return of any investment or portfolio of investments.

This Exclusion shall prevail notwithstanding anything contained in V. Exclusions E. Express Warranty or Guarantee, to the contrary.

G. Manufacturing Liability

for any manufacturing defect in any product.

H. Nuclear

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

1. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

I. Pollution

arising out of, based upon or attributable to the actual or alleged discharge, dispersal, release or escape of any **Pollutants**.

This exclusion shall not apply to any **Claim** or **Defence Costs** arising out of the conduct of the **Professional Services**.

J. Prior Acts, Claims or Circumstances

arising out of, based upon or attributable to any:

1. any **Claim** made prior to the inception date of the **Policy Period**;
2. any circumstance which has been properly notified under any other policy or certificate of insurance attaching prior to the inception of the **Policy Period**; or
3. the conduct of the **Professional Services** before the Retroactive Date.

K. Trade Debts

arising out of, based upon or attributable to any trading **losses** or trading liabilities incurred by any business managed by or carried on by the **Insured**.

This Exclusion shall not apply in respect of any **Claim** (or **Defence Costs**) made against an **Insured** alleging negligence in the normal course of their conduct of any receivership or procedures under the Insolvency Act 1986 (or any amendment or re-enactment thereof) or equivalent legislation.

L. United States of America

arising out of, based upon or attributable to any **Claim** made or pending within, or legal proceedings instituted within the United States of America or any of its territories or possessions including the enforcement by the Courts of any other country of any judgement originally obtained in any Court of the United States of America or any of its territories or possessions.

M. War/Terrorism

arising out of, based upon or attributable to any war (declared or otherwise), **Terrorism**, warlike, military or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

This exclusion shall not apply to any **Claim** or **Defence Costs** arising out of the conduct of the **Professional Services**.

VI. SPECIAL CONDITIONS

A. Minimum Terms and Conditions

The cover provided by this policy is in accordance with the terms, conditions, exclusions and limitations contained herein. However, the cover shall notwithstanding anything in this policy wording to the contrary, be no less favourable and provide no less protection to the **Insured** than the **Approved Minimum Wording**. The minimum insurance requirements as set out in the **Approved Minimum Wording** will take precedence over any terms, conditions, exclusions or limitations contained herein which are less favourable or give less protection to the **Insured**, except those that relate to the **Excess** and the **Limit of Liability**

In any dispute as to whether the cover under this policy is in any respect less favourable or gives less protection to the **Insured** than the **Approved Minimum Wording** would do, such dispute shall be referred to arbitration in accordance with XI. General Conditions E. Dispute Resolution.

B. Non-Disclosure, Misrepresentation or Breach of Policy Condition

1. The **Insurer** agrees that, notwithstanding any term or provision in this insurance or any other document (including but not limited to the Submission) to the effect that any representation or statement made by an **Insured** forms part of or forms the basis of this contract, such term or provision shall be of no effect.
2. i. If an **Insured** fails to disclose or misrepresents a material fact prior to inception of this insurance and such non-disclosure or misrepresentation would entitle the **Insurer** to avoid this insurance, the **Insurer** agrees only to exercise its right to avoid this policy if:
 - a. after final adjudication, it is proven that such non-disclosure or misrepresentation was fraudulent or committed with intent to deceive, the burden of proof of such conduct to be on the **Insurer**; or
 - b. an **Insured** makes an admission of fraudulent conduct or intent to deceive.

Any fraudulent non-disclosure or misrepresentation made by any one **Insured** shall not be imputed to any other **Insured**.

- ii. In all other circumstances, where such innocent or inadvertent non-disclosure or misrepresentation has prejudiced the **Insurers** consideration of terms under this policy, the **Insurer** shall be entitled to make reasonable amendments to the policy terms and conditions (but no reduction in the Limit of Liability) in light of such prejudice provided always that the minimum insurance requirements as set out in VI. Special Conditions A. Minimum Terms and Conditions, shall at all times prevail.

In the event that an **Insured** has failed to inform the **Insurer** or the insurers of any previous policy of which this policy is subsequent insurance, of a **Claim**, loss or circumstance of which a **Responsible Person** became aware which might give rise to a **Claim**, loss or associated **Defence Costs**, such **Claim**, loss or associated **Defence Costs** and/or any **Claim**, loss or associated **Defence Costs** arising from such non-notified circumstance shall fall to be considered by this

policy except that the Insurers liability for payment of such **Claim**, loss or associated **Defence Costs** under this policy shall not extend beyond that which would have been payable by such previous insurer pursuant to the previous insurance under which the **Claim**, loss or circumstance should have been notified. The burden of proof that such notification should have been made to any previous insurers shall be on the Insurer.

2. The **Insurer** shall not reduce or deny its liability under this policy due to breach of or non-compliance with any condition of this policy by an **Insured**. Where any breach of or non-compliance with any condition of this policy has resulted in prejudice to the handling or settlement of any **Claim** or loss under this policy, the Insurer shall be entitled to reduce the indemnity afforded hereunder in respect of such **Claim** or loss (including associated **Defence Costs**) to such sum as in the reasonable opinion of the **Insurer**, would have been payable by the **Insurer** in the absence of such prejudice. The burden of proof of such prejudice shall be on the **Insurer**.

Compliance by the **Insured** with any rules, requirements, directions or guidance of any **Ombudsman** will not constitute a breach of any clause of this policy.

VII. CLAIMS CONDITIONS

A. Allocation

In the event that any **Claim** or **loss** involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any cost of defence, **loss**, judgments and/or settlements shall be made between each **Insured** and the **Insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters or persons not covered under this policy.

B. Notification

1. Notification in respect of Section II. Cover and Section III. Extensions except as otherwise set out in VII. Claims Conditions B.2

- i. The **Insured** shall as soon as reasonably practicable during the **Policy Period** or within seven (7) working days (excluding Saturday, Sunday or a public holiday) after the expiry of the **Policy Period**, notify the **Insurer** of any **Claim** first made against the **Insured** during the **Policy Period**.

Such **Claim** must be notified in writing via Leeson **Claims Services** (LCS Ireland) at the address listed in Item 8 of the Schedule. Such notice to Leeson **Claims Services** (LCS Ireland) shall be deemed notice to the **Insurer**.

A **Claim** is deemed to be first made against an **Insured** only when any **Responsible Person** first receives notice of any **Claim**.

- ii. The **Insured** shall as soon as reasonably practicable:
 - a. following first awareness of any **Responsible Person** during the **Policy Period** of a circumstance they reasonably expect will give rise to a **Claim**, notify the **Insurer** via Leeson **Claims Services** (LCS Ireland) at the address listed in Item 8 of the Schedule.

The notice must include the following to the extent reasonably practicable:

 - a. a statement that it is intended to serve as a notice of a circumstance which is reasonably expected to give rise to a **Claim**;
 - b. the reasons for anticipating that **Claim** (including full particulars as to the nature and date(s) of any potential **Wrongful Act(s)** or defamation);
 - c. the identity of any potential **Claimant(s)**;
 - d. the identity of any **Insured** involved in such circumstance; and
 - e. the date on and manner in which such **Responsible Person** first became aware of such circumstance.
 - b. upon discovery by a **Responsible Person** during the **Policy Period** of reasonable cause for suspicion of any dishonest, fraudulent, criminal or malicious act or omission on the part of any **Insured Person** or any person engaged by the **Firm** to provide **Professional Services** on

behalf of the **Firm**, notify the **Insurer** via Leeson Claims Services (LCS Ireland) at the address listed in Item 8 of the Schedule.

Any such notification in respect of ii.a or ii.b above must be made in writing during the **Policy Period** or within three (3) working days (excluding Saturday, Sunday or a public holiday) after the expiry of the **Policy Period**. Such notice to Leeson **Claims** Services (LCS Ireland) shall be deemed notice to the **Insurer**.

Any later **Claim** arising out of any such notification shall be deemed to be a **Claim** made during the **Policy Period**.

2. Notification in respect of III. Extensions B. Lost **Documents** and III. Extensions C. **Fidelity** only

Upon **Discovery** during the **Policy Period** of a **loss**, the **Insured** shall as soon as reasonably practicable notify the **Insurer** via Leeson **Claims** Services (LCS Ireland) at the address listed in Item 9 of the Schedule, provided however that, such notification is made in writing during the **Policy Period** or within seven (7) working days (excluding Saturday, Sunday or a public holiday) after the expiry of the **Policy Period**. Such notice to Leeson **Claims** Services (LCS Ireland) shall be deemed notice to the **Insurer**.

C. Other Insurance

The liability of the **Insurer** under this policy is not reduced or excluded by reason of the existence or availability of any other insurance. This condition does not affect any right of the **Insurer** to **claim** contribution from any other **insurer** who is also liable to indemnify any **Insured**.

D. Defence

The **Insurer** does not assume any duty to defend. The **Insured** shall defend and contest any **Claim** made against them unless the **Insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and/or settlement of any **Claim**. If the **Insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**. In the event that representation by a solicitor is necessary then the **Insured** shall select one of the **Legal Panel** to provide such legal representation.

E. Co-operation

The **Insured** will:

1. render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
2. use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **loss** covered under this policy; and
3. give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **loss** or determine the **Insurer's** liability under this policy;

and at their own cost (except where such costs are covered under II. Cover C. Defence Costs, III. Extensions A. Court Attendance Costs and III. Extensions C. Fidelity).

F. Consent

No **Insured** shall admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld.

In cases where the **Insured** and the **Insurer** cannot agree whether to contest legal proceedings and/or whether to settle, the **Insured** will be entitled to the opinion of an independent third party, such party to be mutually agreed upon, as to the merits of the legal proceedings or the proposed settlement, as the case may be. Such independent third party should be a Queen's Counsel or a Senior Counsel in the Republic of Ireland as applicable (as mutually agreed between the **Firm** and the **Insurer**, or failing agreement, to be appointed by the President of the Institute of Chartered Accountants in England and Wales / of Scotland / in Ireland as applicable). The **Insured** shall not be required to contest legal proceedings or to settle unless such independent third party advises that such proceedings should be

contested or settled, as the case may be. The cost of the independent third party shall be borne by the **Insurer**.

The **Insurer** shall not settle any **Claim** without the consent of the **Insured**. If the **Insured** refuses to consent to any settlement amount which is recommended by the Insurer and acceptable to the **Claimant**, the **Insurer's** liability for all loss on account of that **Claim** shall not exceed the amount for which the **Claim** could have been settled if the **Insurer's** recommendation had been consented to provided that, the **Insurers** liability shall not exceed the relevant **Limit of Liability** specified in Item 3 of the Schedule plus all costs covered under II. Cover C. Defence Costs incurred up to the date of the refusal.

G. Fraudulent Claims

If any **Insured** shall make a **claim** for indemnity under this policy knowing the same to be false or fraudulent as regards amounts or otherwise, such **claim** shall be excluded. The **Insurer** shall also have the right, in its sole and absolute discretion, to avoid this policy ab initio in respect of that **Insured** (only). This policy shall continue in full force and effect for the benefit of all other **Insureds** as if such false or fraudulent **claim** had not been made.

H. Payment of Costs

1. The **Insurer** shall pay all costs covered under II. Cover C. Defence Costs, III. Extensions A. Court Attendance Costs and III. Extensions C. Fidelity promptly after sufficiently detailed invoices for those costs are received by the **Insurer** including those incurred on behalf of any person who is alleged to have committed or condoned dishonesty or a fraudulent or criminal or malicious act or omission, provided that the **Insurer** is not liable for costs incurred on behalf of any person who is alleged to have committed or condoned a dishonest, fraudulent, criminal or malicious act or omission after the earlier of:
 - i. that person admitting to the **Insurer** the committing or condoning of such dishonest, fraudulent, criminal or malicious act or omission; or
 - ii. a court or other judicial body finding that such person was in fact guilty of such dishonest, fraudulent, criminal or malicious act or omission.
2. The **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

I. Related Claims

If a **Claim** or circumstance is notified in accordance with the requirements of this policy, any subsequent Related **Claim** thereto shall be deemed to have first been:

1. made at the same time as the previously notified **Claim** was first made or the relevant circumstance was first notified; and
2. notified at the same time as such **Claim** or circumstance was first notified.

J. Related Fidelity Loss

Applicable in respect of III. Extensions C. **Fidelity** only

If a **Fidelity Loss** is notified in accordance with the requirements of this policy any subsequent Related **Fidelity Loss** shall be deemed to have first been:

1. **Discovered** at the same time as the previously **Discovered Fidelity Loss**; and
2. notified at the same time as the previously notified **Fidelity Loss**.

K. Settlement

The **Insurer** shall be under no obligation (save where requested by the **Policyholder**) to make any payment to an **Insured** other than the **Policyholder** and shall unless otherwise requested by the **Policyholder** make payment of all **losses insured** hereunder to the **Policyholder** and such payment shall constitute a full and complete release and discharge of the **Insurer's** liabilities in respect of all and any such **loss** whether suffered directly by the **Policyholder** or not.

VIII. LIMIT AND EXCESS CONDITIONS

A. Limit of Liability

1. The amount payable by the **Insurer** shall not exceed the applicable Limit of Liability specified in Item 3 of the Schedule except that, in respect of II. Cover D. **Ombudsman Awards**, the Limit of Liability is the amount specified in Item 3.B. of the Schedule in respect of any one **Claimant** plus interest and **Claimants** costs and expenses subject to a maximum Limit of Liability in respect of any one **Claim** as specified in Item 3.A. of the Schedule.

If pursuant to any amendment or re-enactment of:

- a. the Financial Services and Markets Act 2000; or
- b. the Central Bank and Financial Conduct Authority of Ireland Act 2004

there is an increase to the maximum amount which may be awarded by an **Ombudsman** in respect of any one **Claimant**, the **Limit of Liability** specified in Item 3.B. of the Schedule will automatically increase to equal such maximum amount.

2. Where a **Claim** is made against more than one **Insured** under this policy this shall not operate to increase the total amount payable by the **Insurer** for any one **Claim** under this policy.
3. Cover under III. Extensions A. Court Attendance Costs does not form part of and will not erode the **Limit of Liability** specified in Item 3 of the Schedule.

B. Defence Costs

Costs covered under II. Cover C. Defence Costs are payable in addition to the **Limit of Liability** however, in the event that the amount of **loss** paid by or on behalf of any **Insured** to dispose of a **Claim** exceeds this policy's **Limit of Liability** for any one **Claim**, then this policy shall only cover the same proportion of **Defence Costs** under II. Cover C. Defence Costs as this policy's **Limit of Liability** for any one **Claim** bears to the total amount paid to dispose of the Claim (exclusive of costs covered under II. Cover C. Defence Costs and III. Extensions A. Court Attendance Costs).

C. Excess

The **Insurer** shall only be liable for any **Claim** or **Fidelity Loss** which exceeds the **Excess**.

A single **Excess** shall apply per single **Claim** / **Fidelity Loss** except in respect of any **Loss** payable in accordance with II. Cover D. **Ombudsman Awards** where a single **Excess** shall apply per single **Claimant** subject always to the **Excess** in respect of each and every **Claim** as specified in Item 4.A. of the Schedule.

The **Excess**:

1. applies to all Coverage Sections except II. Cover C. Defence Costs;
2. does not apply to III. Extensions A. Court Attendance Costs or III. Extensions B. Lost Documents.

D. InterRelated Claims and Fidelity Losses

Not Applicable in respect of II. Cover C. Defence Costs, III. Extensions A. Court Attendance Costs or III. Extensions B. Lost Documents

In the event of a **Claim** and/or **Fidelity Loss** where such **Claim** and/or **Fidelity Loss** would be covered in whole or in part under more than one Coverage Section and/or Extension of this policy, such **Claim/Fidelity Loss** shall be deemed to be a single interrelated **Claim/Fidelity Loss** subject to one single Limit of Liability.

In respect of such interrelated **Claim/Fidelity Loss**;

1. The **Insurer's** maximum liability shall not exceed the largest single **Limit of Liability** stated in Item 3 of the Schedule which is applicable to any one of the Coverage Sections/Extension under which such **Claim/Fidelity Loss** is covered.

2. The **Insurer** shall only be liable to make payment for any **Claim/Fidelity Loss** for a maximum amount equal to the largest remaining available **Limit of Liability** for any one of the Coverage Sections/Extension under which such **Claim/Fidelity Loss** is covered and which has not been previously exhausted by payment of an unrelated and / or interrelated **Claim** or **Claims** and/or **Fidelity Loss** or **Fidelity Losses**.
3. The **Insurer** and the **Insured** agree they shall both use their best endeavours to agree a fair apportionment of any such paid interrelated **Claim/Fidelity Loss** amounts which are to be applied as agreed erosion of each of the respective **Limits of Liability** for the applicable Coverage Sections/Extension. In the event that agreement cannot be reached for such apportionment, the **Insurer** and the **Insured** agree to submit the dispute to binding arbitration in accordance with XI. General Conditions E. Dispute Resolution.
4. The **Excess** amount stated in Item 4 of the Schedule shall only apply once in respect of any one interrelated **Claim/Fidelity Loss**. In such an event, if different **Excess** amounts have been indicated in the Schedule as being applicable to each Coverage Section/Extension, the **Excess** amount applicable to any one interrelated **Claim/Fidelity Loss** shall be the highest **Excess** amount shown in Item 4 which is applicable to any of the Coverage Sections/Extension under which such **Claim/Fidelity Loss** is covered.

IX. TERRITORIAL LIMITS

Subject to all terms and conditions of this policy, this policy shall apply to:

1. **Claims** and **Defence Costs** arising out of the conduct of the **Professional Services** anywhere in the world;
2. loss of the type covered under III. Extensions B. Lost Documents and III. Extensions C. Fidelity, sustained anywhere in the world.

X. POLICY ADMINISTRATION CONDITIONS

The **Policyholder** shall act on behalf of each and every **Insured** with respect to:

1. negotiating the terms and conditions of and binding cover;
2. the exercise of all rights of **Insured's** under this policy;
3. all notices;
4. premiums;
5. endorsements to this policy;
6. dispute resolution; and
7. the receipt of all amounts payable to an **Insured** by the **Insurer** under this policy except where requested by the **Policyholder** in accordance with VII. **Claims** Conditions K. Settlement.

XI. GENERAL CONDITIONS

A. Assignment

This policy and any rights hereunder cannot be assigned without the prior written consent of the **Insurer**.

B. Cancellation

This policy may not be cancelled unless the **Policyholder** and the **Insurer** agree mutually in writing to cancel the policy.

In the event of such agreement, **Insurers** shall, within 7 days of the date upon which such agreement in writing is reached, write to:

1. the **Policyholder** at the address specified in Item 1 of the Schedule notifying the **Policyholder** that the policy will be cancelled with effect from a date not less than 30 days after the date of such agreement;
2. the relevant Institute, being the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, notifying it of the agreement, the effective date of cancellation and the name of the **Policyholder**.

In the event of cancellation, if there have been no **Claims**, circumstances or **losses** notified during the current **Policy Period**, a return premium will be refunded to the **Policyholder** calculated at pro-rata of the policy premium, less any broker commission if applicable but if any **Claims**, circumstances or **losses** have been notified during the **Policy Period**, there will be no return of premium without the prior written agreement of the **Insurer**.

Cancellation will not affect the rights and obligations of the **Insurer** and the **Insured** accrued under this policy prior to the date from which cancellation has effect.

In respect of III. Extensions C. Fidelity only

Cover under III. Extensions C. **Fidelity** shall cease to apply in respect of an **Insured** Person who has committed a dishonest, fraudulent, criminal or malicious act subsequent to the date of **Discovery** of a dishonest, fraudulent, criminal or malicious act committed by such **Insured** Person.

C. Contract Rights

This Policy is not intended to confer any directly enforceable benefit upon any third party other than the **Firm** or an **Insured** and no other third parties shall acquire any rights in relation to this policy under the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof, or any equivalent legislation, to enforce any term of this contract or otherwise.

D. Governing Law

Any interpretation of this policy relating to its construction, validity or operation shall be made exclusively in accordance with the laws of the Republic of Ireland and in accordance with the English text as it appears in this policy.

E. Dispute Resolution

(Except as otherwise provided in VII. **Claims** Conditions F. Consent) where, following receipt by the **Insurer** of all information reasonably required to provide such decision;

1. a final decision has been given by the **Insurer** regarding any aspect of this policy or any matter relating to cover thereunder;
2. that decision is disputed between the **Insurer** and an **Insured**; and
3. such dispute cannot be resolved within 14 days of the date on which such decision is communicated to Arachas Corporate Brokers Limited;

the dispute shall be referred to arbitration before a sole arbitrator to be mutually agreed upon by the **Policyholder** and the **Insurer** (or failing agreement to be appointed by the President of the Institute of Chartered Accountants in England and Wales / of Scotland / in Ireland as applicable) in accordance with the Arbitration Act 1996. The Arbitrator's decision (which will be based on English law unless the relevant **Members'** principal place of business is in Scotland, Northern Ireland or the Republic of Ireland, in which case the law of Scotland, Northern Ireland or the Republic of Ireland as the case may be, will apply), shall be final and binding on all parties.

If the dispute concerns the **Insurers** liability to cover the **Insured** (including without limitation a dispute as to the policy year under which any **Claim** or circumstance might fall to be dealt with between (a) the **Insurer** and (b) any insurer(s) subscribing to the policy corresponding to this policy in respect of a previous period of insurance), the **Insured** and the **Insurer** agree that the **Insurer** will cover the **Insured** in accordance with Section II. Cover and Section III. Extensions and advance costs in accordance with VII. Claims Conditions H. Payment of Costs pending resolution of any such dispute.

To the extent that any of the provisions of this clause may fail and/or for the purposes of any application under the Arbitration Act 1996, the courts of England and Wales / Scotland / Ireland as applicable shall have exclusive jurisdiction to hear and determine any disputes, suits, actions or proceedings that may arise out of or in connection with this policy.

F. Subrogation

The **Insured** shall take all reasonable steps necessary or such steps as are reasonably required by the **Insurer** before or after any payment by the **Insurer** under this policy to preserve the rights and remedies which the **Insured** may have to recover any **loss**.

If any payment is to be made under this policy, the **Insurer** shall be entitled to exercise their rights of subrogation in order to takeover any rights of recovery that the **Insured** would otherwise have had against any party from whom a recovery may be made, whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. The **Insurer** will pursue and enforce such recovery rights in the name of the **Insured**, who, both before and after payment under this policy, shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice the **Insurer's** rights under this Subrogation Clause.

The **Insurer** agrees not to exercise any such right of recovery against any **Insured** Person or any person engaged by the **Firm** to provide **Professional Services** on behalf of the **Firm** unless the loss is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of such person.

G. No Set-Off

The **Insurer** shall not be entitled to set-off against any amount which it is liable to pay under this policy any payment due to it by any **Insured**. Notwithstanding the foregoing, by way of indemnity, the **Insurer** shall only be obliged to pay any amount in **excess** of the applicable **Excess** specified in Item 4 of the Schedule.

H. International Trade Sanctions

The **Insurer** shall be deemed not to provide cover and shall not be liable to pay any **Claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the **Insurer** 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, Australia or United States of America.

I. Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in bold have a special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.

Wherever reference is made to 'policy', '**Policyholder**' or '**Policy Period**' herein:

1. it is also deemed to read 'certificate', 'Certificate holder' or 'Certificate Period' respectively; and
2. such alternative so deemed words shall have the same special meaning as the word it is deemed to read as.

J. Right to Cancel during the Cooling-Off Period

The **Policyholder** is entitled to cancel this policy by notifying the **Insurer** in writing, by email or by telephone within fourteen (14) business days of either

- (i) the date the **Policyholder** receives this policy; or
- (ii) the start of the **Policy Period**;

whichever is the later.

A full refund of any premium paid will be made unless the **Policyholder** has made a **Claim** in which case the full annual premium is due.

K. Complaints

In the event that the **Policyholder** has a complaint against the **Insurer**, in the first instance the **Policyholder** should address correspondence to:

Complaints Department
Arachas Corporate Brokers Limited
9 Eastgate Avenue, Eastgate Business Park, Little Island, Co. Cork,
E: compliance@arachas.ie, T: +353 (21) 427 0505

All correspondence will be passed to the **Insurer** who will investigate matters and respond.

Your complaint will be acknowledged by the **Insurer**, in writing, within 5 (five) business days of the complaint being made. You will also be informed of the name of one or more individuals that will be your point of contact regarding your complaint until the complaint is resolved or cannot be progressed any further. You will be provided with an update on the progress of the investigation of your complaint, in writing, within 20 (twenty) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 40 (forty) business days of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 40 (forty) business days of the complaint being made, you may be eligible to refer your complaint to the Financial Services and Pensions Ombudsman (FSPO). The contact details are as follows:

Financial Services and Pensions Ombudsman Lincoln House
Lincoln Place Dublin 2, D02 VH29, Republic of Ireland
T: +353 1 6 567 7000, E: info@fspoi.ie, W: www.fspoi.ie

The complaints handling arrangements above are without prejudice to the **Policyholder's** right to commence a legal action or an alternative dispute resolution proceeding in accordance with the **Policyholder's** contractual rights.

ACCOUNTANTS PROFESSIONAL INDEMNITY

SECTION 2, PROFESSIONAL INDEMNITY – EXCESS LAYER (XSPIARACHASACC01)

APPLICABLE TO LIMITS OF LIABILITY IN EXCESS OF €2,500,000 ANY ONE CLAIM

I. COVER

A. The **Insurer** will provide the **Insured** with insurance coverage during the **Policy Period** up to the Limit of Liability Hereunder for **loss**, in **excess** of the Primary Policy Limit of Liability provided that the Primary Policy **insurer(s)** shall have:

1. paid the amount for which they are liable; or
2. agreed to pay the amount for which they are liable; or
3. had their liability to pay established by judgement, arbitration award or other final binding adjudication

whichever of 1. to 3. above occur first.

B. Defence Costs

This policy will pay Defence Costs in addition to the Limit of Liability Hereunder. In the event of a Claim arising to which the Insurer may be liable to contribute towards payment of Defence Costs, the Insurer shall contribute to the said costs in the proportion that their share of the **loss**, as finally settled, bears to the total amount paid or payable to dispose of the Claim.

C. Primary Policy

Except as otherwise provided herein this policy is subject to the same terms, conditions, exclusions, limitations and definitions as the Primary Policy.

II. DEFINITIONS

A. Insurer

Insurer means the Underwriters(s) of this insurance as listed in Item 9, Professional Indemnity – **Excess** Layer of the Schedule.

B. Primary Policy

Primary Policy shall mean Section 1 of this Policy.

C. Primary Policy Limit of Liability

Primary Policy Limit of Liability shall mean €2,500,000 any one **Claim**.

D. Limit of Liability Hereunder

Limit of Liability Hereunder shall mean the total amount specified in Item 3 of the Schedule Applicable to Sections 1 and 2 of this Policy, less the amount of the Primary Policy Limit of Liability.

Claim, Defence Costs, Insured, and Policy Period shall have the same meaning as specified in the **Primary Policy**.