

# Technology

## Professional Indemnity Insurance Policy document



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# TECHNOLOGY PROFESSIONAL INDEMNITY

## SECTION 1, PROFESSIONAL INDEMNITY – PRIMARY LAYER (PIARACHASTECH01)

In consideration of the 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, all cover 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 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 provide **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**.

### 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 as a witness in connection with a **Claim** 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 the **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; and
4. the **Insurer** shall not be liable for any loss or damage:
  - i. arising out of, based upon or attributable to any wear, tear, gradual deterioration, moth or vermin;
  - ii. in respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.

#### **C. Irrecoverable Fees**

indemnify the **Insured** for the amount of any unpaid fees which are attributable to **Professional Services** carried out by or on behalf of the **Insured** for a Third Party, if the Third Party:

1. has refused to pay all or part of the amount due as fees for the **Professional Services**;
2. has reasonable grounds for being dissatisfied with the **Professional Services**; and
3. threatens to bring a **Claim** against the **Insured** for more than the amount owed;

where in the reasonable opinion of the **Insurer** by not pursuing the Third Party for the amount owed, it will avoid a **Claim** for a greater amount which would be covered under this policy.

### **IV. DEFINITIONS**

#### **A. 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.

## **B. 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.

## **C. Defence Costs**

**Defence Costs** means reasonable fees, costs and expenses 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**.

## **D. Discovered and Discovery**

**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**.

## **E. 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.

## **F. 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; and
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.

## **G. Excess**

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

## **H. Firm**

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

## **I. Insured**

**Insured** means:

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

## **J. 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**; and
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.

**K. Insurer**

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

**L. 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.

**M. Limit of Liability**

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

**N. Loss**

**Loss** means in respect of II. Cover A. Professional Indemnity and II. Cover B. Defamation only:

1. **Damages**; and
2. claimants costs and expenses.

**Loss** shall not include any:

i. taxes;

- i. a. non-compensatory damages or punitive, multiple or exemplary damages;
- b. fines or penalties

except:

1. exemplary damages for defamation; and
  2. 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.

**O. 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.

**P. Partner**

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

**Q. Partnership**

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

**R. Policy Period**

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

**S. Policyholder**

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

**T. 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.

**U. Principal**

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

**V. Professional Services**

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

**W. 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**.

**X. Responsible Person**

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

**Y. Retroactive Date**

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

**Z. 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**.

#### AA. **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** specified 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**.

#### BB. **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.

#### CC. **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.

#### DD. **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.

## V. EXCLUSIONS

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

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

for:

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. Directors' and Officers'

arising out of any person acting in their capacity as a director or officer of a body corporate.

#### D. 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 G. Payment of Costs.

#### E. 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.

#### F. 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.

#### G. Infrastructure

for any:

1. mechanical failure;
2. electrical failure, including any electrical power interruption, surge, brown out or black out; or
3. telecommunications or satellite systems failure.

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



**H. Insolvency**

directly arising from the insolvency or bankruptcy of an **Insured**.

**I. Manufacturing liability**

for any manufacturing defect in any cabling, hardware and peripherals, (including as supplied in any firmware).

**J. 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.

**K. Other Insurance**

in respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.

**L. Pollution**

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

**M. Prior Acts, Claims or Circumstances**

arising out of, based upon or attributable to:

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 date of the **Policy Period**; or
3. the conduct of the **Professional Services** before the Retroactive Date.

**N. Trade Debts**

arising out of, based upon or attributable to any:

1. trading debt incurred by an **Insured**; or
2. guarantee given by an **Insured** for a debt.

**O. 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.

**P. 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.

**O. Absolute Pyrite &/or MICA Exclusion**

This policy shall not cover any **Claim** or **Defence Costs**:

arising out of, based upon or attributable to:

the use, specification, testing, remediation, removal or exposure to Pyrite or MICA or materials or products containing Pyrite or MICA whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

## R. Fire Safety Exclusion

It is hereby noted and agreed that this **Policy** shall exclude any **Claim** arising out of any **Fire Safety Notification**

A **Fire Safety Notification** is defined as

Any Claim(s), losses, liability, costs, expenses or defence costs directly or indirectly arising out of or connected to:-

- i. the combustibility, fire protection performance, fire resistance/fire retardant characteristics of any external cladding or roofing systems
- ii. any internal fire protection systems
- iii. any aspect of the fire safety or fire performance of a building or structure

## S. Professional Indemnity Cyber and Data Protection Law Endorsement

1. This endorsement takes priority over any other provision in this contract.
2. Save as expressly provided in this endorsement, or by other restrictions in this contract specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a **Computer System**.
3. This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:
  - a. a **Cyber Act**; or
  - b. any partial or total unavailability or failure of any **Computer System**;  
provided the **Computer System** is owned or controlled by the insured or any other party acting on behalf of the insured in either case; or
  - c. the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured.
4. This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
  - a. to the insured or any other party acting on behalf of the insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the insured;
  - b. by any utility provider, but only where such failure of interruption of service impacts a **Computer System** owned or controlled by the insured or any other party acting on behalf of the insured.
5. This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the insured or any other party acting on behalf of the insured.
6. Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the insured or any other party acting on behalf of the insured in this contract shall not apply to **Data**.

For the purposes of this endorsement the following definitions apply:

**Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

**Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **Computer System**.

**Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

**Data Protection Law** means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

## VI. SPECIAL CONDITION

### 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.

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**.

3. 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**.

## 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 three (3) 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 **Claims** 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 persons 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 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 8 of the Schedule, provided however that, such notification is 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**.

## **C. 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.

#### **D. 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 and III. Extensions A. Court Attendance Costs).

#### **E. 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.

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.

#### **F. Fraudulent Claims**

If the **Insured** makes a fraudulent claim under this policy then the **Insurer**:

1. will not pay for such fraudulent claim;
2. may recover from the **Insured** any sums that they paid the **Insured** in respect of the claim; and
3. may give the **Insured** notice to terminate this policy with effect from the time of the fraudulent act.

A fraudulent claim includes supporting a claim by fraudulent documents, devices or statements (whether or not the claim itself is genuine) and exaggerated claims.

If the **Insurer** terminates this policy then the **Insurer** will refuse all liability to the **Insured** for claims under this policy occurring after the time of the fraudulent act and they will not return any of the premium. Such termination of this policy by the **Insurer** will not affect the policy with respect to a claim occurring prior to the fraudulent act.

#### **G. Payment of Costs**

1. The **Insurer** shall pay all costs covered under II. Cover C. Defence Costs and III. Extensions A. Court Attendance Costs 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 a dishonest, fraudulent, 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.

#### H. 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.

#### I. 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.
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** which exceeds the **Excess**.

A single **Excess** shall apply per single **Claim**.

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 and III. Extensions B. Lost Documents.

#### D. Interrelated Claims

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

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

In respect of such interrelated **Claim**;

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 under which such **Claim** is covered.

2. The **Insurer** shall only be liable to make payment for any **Claim** for a maximum amount equal to the largest remaining available **Limit of Liability** for any one of the Coverage Sections under which such **Claim** is covered and which has not been previously exhausted by payment of an unrelated and / or interrelated **Claim** or **Claims**.
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** amounts which are to be applied as agreed erosion of each of the respective Limits of Liability for the applicable Coverage Sections. In the event that agreement cannot be reached for such apportionment, the **Insurer** and the **Insured** agree to submit the dispute to binding arbitration.
4. The **Excess** amount specified in Item 4 of the Schedule shall only apply once in respect of any one interrelated **Claim**. In such an event, if different **Excess** amounts have been indicated in the Schedule as being applicable to each Coverage Section, the **Excess** amount applicable to any one interrelated **Claim** shall be the highest **Excess** amount shown in Item 4 which is applicable to any of the Coverage Sections under which such **Claim** is covered.

## IX. TERRITORIAL LIMITS

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

1. claims 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, 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 I. 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 be cancelled by the:

1. **Insurer** pursuant to the Premium Payment clause for non-payment of premium in accordance with XI. General Conditions F. Premium Payment Condition;
2. **Policyholder** with effect immediately upon the **Insurer**'s receipt of written notice of such cancellation; or
3. mutual agreement between the **Insurer** and the **Policyholder**.

In respect of 2. and 3. above:

- i. 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; or
- ii. 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.

### **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**

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 under The Insurance & Reinsurance Arbitration Society ("A.R.I.A.S (UK)") Arbitration Rules.

The Arbitration Tribunal (the "Tribunal") shall consist of three arbitrators, one to be appointed by the Policyholder, one to be appointed by the Insurer and the third to be appointed by the two appointed arbitrators. The third member of the Tribunal shall be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator.

The arbitrators shall be persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisors serving the industry.

Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then upon application, A.R.I.A.S (UK) will appoint an arbitrator to fill the vacancy. At any time prior to the appointment by A.R.I.A.S (UK) the party or arbitrators in default may make such appointment.

The Tribunal may at its sole discretion make such orders and directions as it considers necessary for the final determination of the matters in dispute where such final determination shall be binding upon the Insured and the Insurer. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions. The seat of arbitration shall be London, England and the law governing the arbitration shall be under the law of England and Wales.

The parties are deemed to have agreed that there will be a right of appeal to the Courts but only where the tribunal certifies in its award that the dispute between the parties involves a question of law of general interest or importance to the trade or industry in question. For the avoidance of doubt this provision does not apply to any ruling by a tribunal in relation to its own jurisdiction or otherwise restrict the parties' rights under Section 69 of the Arbitration Act 1996.



## 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. Premium Payment Condition

The **Policyholder** undertakes that premium will be paid in full to the **Insurer** within 60 days of inception of this policy (or, in respect of instalment premiums, when due).

If the premium due under this policy has not been so paid to the **Insurer** by the 60th day from the inception of this policy (and, in respect of instalment premiums, by the date they are due) the **Insurer** shall have the right to cancel this policy by notifying the **Policyholder** via the broker in writing. In the event of cancellation, premium is due to the **Insurer** on a pro rata basis for the period that the **Insurer** is on risk but the full policy premium shall be payable to the **Insurer** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this policy.

It is agreed that the **Insurer** shall give not less than 15 days prior notice of cancellation to the **Policyholder** via the broker. If premium due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the Leading **Insurer** (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all **Insurers** participating in this contract.

If any provision of this condition is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this condition which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to the **Insurer** will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

## 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](mailto: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@fspo.ie](mailto:info@fspo.ie), W: [www.fspo.ie](http://www.fspo.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.

# TECHNOLOGY PROFESSIONAL INDEMNITY

## SECTION 2, PROFESSIONAL INDEMNITY – EXCESS LAYER (XSPIARACHASTECH01)

### 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**.