

Surveyors

Professional Indemnity Insurance Policy document



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SURVEYORS PROFESSIONAL INDEMNITY

SECTION 1, PROFESSIONAL INDEMNITY – PRIMARY LAYER (PIARACHASS&V01)

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

Claims Made and Reported

Except as otherwise specified in III. Extensions B. Lost **Documents** and III. Extensions C. Statutory Regulation, 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 might 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**, and/or others acting for and/or on behalf of the **Insured** for whom the **Insured** are legally liable including 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, 2 and/or 3 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);
3. for any other relevant party (not including any expert witness) who the **Insured** is obliged to compensate: up to € 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. Statutory Regulation

pay on behalf of an **Insured** 80% of all costs and expenses incurred with the **Insurers'** prior written consent for the defence of any proceedings (including any appeal against a conviction arising from such proceedings) first brought against an **Insured** during the **Policy Period** under the:

1. The Consumer Information Act 1978; and/or
2. The Auctioneers and Housing Agents Act 1947, 1967 and 1973; and/or
3. The Safety, Health and Welfare at Work Act 2005; and/or
4. The Safety, Health and Welfare (Construction) Regulations 2006 to 2010
5. The Data Protection Act 1998; and/or
6. similar or successor legislation to that detailed in 1 – 5 above

where, in the **Insurer's** reasonable opinion, defending such proceedings could protect the **Insured** against any **Claim** or potential **Claim** arising from **Professional Services** undertaken by the **Insured**.

D. Legal Representation Costs

pay on behalf of an **Insured** 80% of all costs and expenses incurred with the **Insurers** prior written consent for representation at properly constituted hearings, tribunals or proceedings provided that:

1. such hearing, tribunal or proceedings arises out of a:
 - i. **Claim** and/or;
 - ii. circumstance first notified in accordance with VII. **Claims** Conditions B.ii; and
2. such costs and expenses are not indemnified as **Defence Costs** under II. Cover C. **Defence Costs**.

E. Adjudication and Arbitration

1. subject to the terms, conditions, exclusions and limitations of this policy, extend Section II. Cover to indemnify the **Insured** in respect of any decision by an adjudicator appointed to resolve a dispute or an adjudication clause or rules contained in a contract provided that:
 - i. the **Insured** agrees:
 - a. subject to a reasonable request by the **Insurer** for permission, to permit the **Insurer** to pursue legal, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the adjudicator. The **Insured** will give all such assistance as the **Insurer** may reasonably require in relation to such proceedings.
 - b. not to accept the decision of any adjudicator as finally determining the related dispute without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld or delayed.
 - ii. the **Insurer** shall not be liable for any **Claim** or **Defence Costs** arising out of any decision made against the **Insured** by an adjudicator who was not independent of the parties to the dispute;
2. pay on behalf of an **Insured** all **Loss** which the **Insured** is legally liable to pay resulting from any award by an arbitrator or tribunal of arbitrators.

The **Insurer** shall not be liable for any **Claim** or **Defence Costs** arising out of any arbitration award made in respect of any **Claim** or counterclaim where the seat of the arbitration was located outside the Republic of Ireland unless that seat was agreed to by the **Insurer**.

F. Consortia and Joint Ventures

This policy extends to cover the **Insured** whilst operating as part of a consortia or joint venture but only to the extent of the **Insured's** liability arising out of the conduct of their **Professional Services**.

IV. DEFINITIONS

A. Approved Policy Wording

Approved Policy Wording means the Royal Institution of Chartered Surveyors approved minimum professional indemnity policy wording for members in force at the inception date of this policy as specified in Item 2 of the Schedule, a copy of which can be obtained on application to the Royal Institution of Chartered Surveyors.

B. Asbestos Surveys

Asbestos Surveys means either a management survey or a refurbishment survey or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos at Work Regulations 2006, or any amendment or re-enactment thereof or, any other comparable survey or inspection, whether of commercial or residential land or property.

C. Bodily Injury

Bodily Injury means death and injury, illness or disease whether bodily or mental.

D. 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;
5. notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract by a **Third Party**; or
6. criminal proceeding commenced by a **Third Party**

alleging a **Wrongful Act** or defamation.

E. Collateral Warranty or Duty of Care Agreement

Collateral Warranty or **Duty of Care Agreement** means any written agreement that creates a duty of care by the **Insured** to any party other than the **Insured's** direct client.

F. 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 (whether under the Surveyors and Valuers Arbitration Scheme 1998 or otherwise) rendered against an **Insured**, or for settlements negotiated by the **Insurer** with the consent of the **Policyholder** for a **Wrongful Act** or defamation.

G. 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, delayed or withdrawn. **Defence Costs** shall not include:

1. costs covered under III. Extensions A. Court Attendance Costs;
2. costs and expenses covered under III. Extensions C. Statutory Regulation or III. Extensions D. Legal Representation Costs; or
3. any other element of an **Insured's** own time costs or lost profits incurred in dealing with a **Claim**.

H. 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**.

I. Documents

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

J. 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.

K. Environmental Audit

Environmental Audit shall mean an investigation which is specifically intended to assess whether there is actual Pollution present.

L. Excess

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

M. Firm

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

N. Insured

Insured means:

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

O. 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. in respect of **Professional Services** undertaken on behalf of the **Firm** only, those persons named as consultants or former consultants in the Submission;
4. in respect of **Professional Services** undertaken on behalf of the **Firm** only, any **Employee** and any self-employed person; or
5. the estate or legal representative of any deceased or legally incapacitated person in 1 – 4 above but only in respect of any act, error, omission or event committed or alleged to have been committed by such person in 1 – 4 above.

P. Insurer

Insurer means those **Insurer(s)** listed in Item 10 of the Schedule.

Q. 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.

R. Limit of Liability

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

S. Loss

Loss means in respect of

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

- i. Damages; and
- ii. claimants costs and expenses.

2. II. Cover D. Ombudsman Awards

the cost of any monetary award or direction to do something which results in the payment of money to a complainant **Third Party**.

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 or direction 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.

T. 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.

U. Ombudsman

Ombudsman means any ombudsman acting in his position as ombudsman under any recognised scheme established within the United Kingdom (including the Channel Islands and the Isle of Man) and/or Ireland.

V. Partner

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

W. Partnership

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

X. Policy Period

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

Y. Policyholder

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

Z. Pollution

Pollution means any pollution or contamination by naturally occurring or man-made substances, forces or organisms, or any combination of them whether permanent or transitory and however occurring except asbestos.

AA. Principal

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

BB. Professional Services

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

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;
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. Responsible Person

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

EE. Retroactive Date

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

FF. 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**.

GG. 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**.

HH. 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.

II. 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.

JJ. 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

directly or indirectly resulting from the presence or release or possible presence or possible release of asbestos or asbestos containing materials in whatever form or quantity.

Notwithstanding the foregoing, this exclusion shall not apply to any **Claim** and/or **Defence Costs** caused by a negligent act, negligent error or negligent omission in the conduct of the **Professional Services** unless such **Claim**:

1. directly or indirectly results from **Asbestos Surveys** carried out by the **Insured**.
2. arises out of or in any way involves Bodily Injury or fear of suffering Bodily Injury due to the presence or release or possible presence or possible release of asbestos or asbestos containing materials in whatever form or quantity.

The total amount payable by the **Insurer** in respect of any one **Claim** and in the aggregate for the **Policy Period** shall not exceed the **Limit of Liability** for Asbestos specified in Item 3.B. of the Schedule.

B. Contractual Liability

1. for any contractual liability incurred by the **Insured** in the conduct of **Professional Services** carried on by the **Insured** as a result of:
 - i. the acceptance by the **Insured** of an obligation, or the guarantee by the **Insured**, of fitness for purpose where this appears as an express term;
 - ii. any express guarantee given by the **Insured** including any relating to the period of a project;
 - iii. any express penalty contained in a contract between the **Insured** and a **Third Party**; or
 - iv. any express acceptance by the **Insured** of liability for liquidated damages.

2. Applicable in respect of any contractual liabilities entered into on or after 1st October 2001 only:

for any liability that arises in consequence of any assignment of a **Collateral Warranty or Duty of Care Agreement** to more than one party except in the case of a **Collateral Warranty or Duty of Care Agreement** given to a financier or funding party (not a purchaser or tenant) where a total of two assignments is permissible.

This exclusion shall not apply if:

- i. liability would have attached to the **Insured** in the absence of any such express agreement;
- ii. the **Insurer** expressly approved the contractual terms giving rise to the said liability; or
- iii. in the case of a Collateral Warranty or Duty of Care Agreement, the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.

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 H. 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. Financial Services

arising out of any Regulated Activities as defined in The Financial Services & Markets Act 2000 as amended from time to time.

This exclusion shall not apply to:

1. mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which the **Firm** has permission pursuant to Part IV of The Financial Services & Markets Act 2000;
2. any liability arising out of the conduct of **Professional Services** whilst the **Insured** is acting in their capacity as an Appointed Representative of a **Third Party** who has been accredited with a Part IV Permission Notice by the Financial Conduct Authority.

G. Infrastructure

any Claim directly arising from:

- a. the partial or total unavailability of any Computer System owned or controlled by the Insured; or
- b. failure or interruption of service provided:
 - i. 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;
 - ii. by any utility provider, but only where such failure or interruption of service impacts a computer system owned or controlled by the insured or any other party acting on behalf of the Insured.

This exclusion shall not apply to any Claim arising out of the actual or alleged breach of duty in the performance of (or failure to perform) of Professional Services.

H. Insolvency

arising out of or relating solely to the insolvency or bankruptcy of an **Insured**.

This exclusion shall not apply to:

1. any **Claim** in respect of monies held on behalf of Third Parties; or
2. any **Claim** that would otherwise be indemnified by this policy but for the insolvency or bankruptcy of the **Insured**.

I. Market Fluctuation

relating to the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity or other markets which are outside the influence or control of an **Insured**.

This exclusion shall not apply to any **Claim** or **Defence Costs** arising out of the conduct of **Professional Services** of the **Insured** in connection with any survey or valuation of tangible property.

J. Manufacturing

for any manufacturing defect in any product.

This exclusion shall not apply to project models or displays.

K. 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.

L. 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.

M. Pollution

arising directly or indirectly from **Pollution**.

This exclusion shall not apply to any **Claim** and/or **Defence Costs** caused by a negligent act, negligent error or negligent omission in the conduct of the **Professional Services** unless such **Claim** directly or indirectly results from Environmental Audits carried out by the **Insured**. The **Limit of Liability** payable by the **Insurer** in respect of any one **Claim** and in the aggregate for the **Policy Period** shall not exceed the **Limit of Liability** for Pollution specified in Item 3.C. of the Schedule except however, if a **Claim** arises from the **Insured's** negligent structural design or specification or failure to report a structural defect in a property and relates solely to the cost of re-designing, re-specifying, remedying and/ or rectifying the defective structure then the maximum indemnity in respect of any one **Claim** shall not exceed the **Limit of Liability** specified in Item 3.A. of the Schedule.

N. 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.

O. Surveys and Valuations (Qualifications and Experience)

arising out of:

1. a survey, unless it was undertaken by:
 - i. anyone who is:
 - a. a Fellow, a Professional Member, a Technical Member or an Associate Member of the Royal Institution of Chartered Surveyors (RICS);
 - b. a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA);
 - c. a Fellow or Associate of the Architects and Surveyors Institute (ASI);
 - d. a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS);
 - e. a Fellow or Associate of the Royal Institute of British Architects (RIBA);
 - f. a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS);
 - g. a Fellow or Associate of the Institute of Professional Auctioneers and Valuers (IPAV);
 - h. a Fellow or Associate of the Society of Chartered Surveyors Ireland (SCSI);
 - ii. anyone who has not less than two years' experience of such work; or
 - iii. any other person delegated by the **Insured** to execute such work providing that:
 - a. such work is supervised by a person qualified in accordance with 1.i or 1.ii above; or
 - b. the **Insurer** has agreed in writing to cover such person prior to them carrying out such work.
2. a valuation produced prior to 30th April 2011, unless it was undertaken by a person qualified in accordance with 1. above.

3. a valuation produced on or after 30th April 2011:
 - a. unless it was undertaken or supervised by a RICS Registered Valuer and in accordance with RICS Valuation Standards PS 1; or
 - b. where the RICS Valuation Standards do not apply, unless it was undertaken by a person qualified in accordance with 1. above.

O. 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.

P. 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.

Q. 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.

S. 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.

T. 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

U. 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 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 minimum insurance requirements of the Approved Policy Wording.

The minimum insurance requirements as set out in the Approved Policy Wording will take precedence over any terms, conditions, exclusions or limitations contained herein which are less favourable or give less protection to the **Insured**.

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**.

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**.

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, B.3 and C**
 - i. The **Insured** shall as soon as reasonably practicable during the **Policy Period** or within ten (10) 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 might 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 they reasonably expect might 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.
 - c. upon discovery by a **Responsible Person** during the **Policy Period** of an occurrence that might require representation at a properly constituted hearing, tribunal or proceeding 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, ii.b or ii.c 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 ten (10) 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**.

3. Notification in respect of III. Extensions C. Statutory Regulation only

- i. The **Insured** shall as soon as reasonably practicable during the **Policy Period** or within ten (10) working days (excluding Saturday, Sunday or a public holiday) after the expiry of the **Policy Period**, notify the **Insurer** of any proceedings first brought against an **Insured** during the **Policy Period**.

Notification must be made 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**.

Proceedings shall be deemed to be first brought against the **Insured** only when any **Responsible Person** first receives notice of any proceedings.

- ii. The **Insured** shall as soon as reasonably practicable upon discovery or awareness by a **Responsible Person** during the **Policy Period** of an occurrence or event that might require representation at any proceeding notify the **Insurer** via Leeson Claims Services (LCS Ireland) at the address listed in Item 8 of the Schedule.

Such notification 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 proceedings arising out of any such notification shall be deemed to be proceedings notified during the **Policy Period**.

C. Notification of Adjudication under an Adjudication Contract

1. The **Insured** shall notify the **Insurer** of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract received by a **Responsible Person** within two (2) working days (excluding Saturday, Sunday or a public holiday) of such receipt.

Notification must be made 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 to be notice to the **Insurer**.

2. The **Insured** shall not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract without the prior written consent of the **Insurer** unless, in the **Insured's** reasonable opinion, service of those notices will not give rise to a **Claim**.

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, III. Extensions C. Statutory Regulation and III. Extensions D. Legal Representation Costs).

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.

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 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.

H. **Payment of Costs**

1. The **Insurer** shall pay all costs covered under II. Cover C. **Defence Costs**, III. Extensions A. Court Attendance Costs, III. Extensions C. Statutory Regulation and III. Extensions D. Legal Representation 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 under II. Cover C. **Defence Costs**, III. Extensions A. Court Attendance Costs and III. Extensions D. Legal Representation Costs 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:
 - a. that person admitting to the **Insurer** the committing or condoning of such dishonest, fraudulent, criminal or malicious act or omission; or
 - b. 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. **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. 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.
3. 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.

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, III. Extensions A. Court Attendance Costs, III. Extensions C. Statutory Regulation and III. Extensions D. Legal Representation 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, III. Extensions B. Lost Documents, III. Extensions C. Statutory Regulation or III. Extensions D. Legal Representation Costs.

D. Interrelated Claims

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

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 arbitration in accordance with XI. General Conditions E.
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. XI. General Conditions E. Choice of Law, Disputes and Jurisdiction; 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 J. 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 G. 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 equivalent legislation in the Republic of Ireland, or any amendment or re-enactment thereof, 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. Choice of Law, Disputes and Jurisdiction

1. 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.
2. Any dispute between the **Insurer** and the **Insured**:
 - i. as to the correct interpretation of the **Professional Services**;
 - ii. regarding the application of VI. Special Conditions A. Minimum Terms and Conditions and VI. Special Conditions B. Non-Disclosure, Misrepresentation or Breach of Policy Condition
 - iii. regarding the application of VIII. Limit and **Excess** Conditions D. Interrelated **Claims**shall be referred by either party for arbitration in accordance with the law and procedure of the Republic of Ireland to any person nominated by the President for the time being of the Society of Chartered Surveyors Ireland, whose decision shall be binding on both parties.
3. In cases where the **Insured** and the **Insurer** cannot agree whether to contest legal proceedings (whether defence or prosecution) and/or whether to settle, the dispute will be resolved by reference to a Senior Counsel of the Irish Bar (as mutually agreed between the **Firm** and the **Insurer**, or failing agreement, to be appointed by the Chairman of the Bar Council) whose decision shall be binding. In resolving the dispute, the Senior Counsel shall have due regard to the interests of both the **Insured** and the **Insurer**. The cost of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.
4. Except as otherwise stated above, the courts of the Republic of Ireland are to have exclusive jurisdiction for hearing and determining any dispute arising 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. 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, 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.

SURVEYORS PROFESSIONAL INDEMNITY

SECTION 2, PROFESSIONAL INDEMNITY – EXCESS LAYER (XSPIARACHASS&V01)

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**.