



## PROFESSIONAL INDEMNITY INSURANCE POLICY TECHNOLOGY RISKS

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IN CONSIDERATION of the **INSURED** hereto having paid to **INSURERS** the premium set forth in the Schedule, **INSURERS** HEREBY AGREE to provide the insurance described in this Policy of Insurance for the **PERIOD OF INSURANCE** subject to all the terms and conditions contained herein or endorsed hereon.

### PROVIDED THAT:

- a) the total liability of **INSURERS** shall not exceed the **LIMIT OF INDEMNITY** or such other limits of indemnity as may be substituted therefor by memorandum hereon or attached hereto
- b) this Policy, the Schedule (including any Schedule issued in substitution) and any Memoranda shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears
- c) where there is more than one insurer, insurers' obligations under this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. Insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations hereunder.

### INSURING CLAUSES

#### INSURERS agree:

#### 1. CIVIL LIABILITY

To indemnify the **INSURED** against any **LOSS** arising from a **CLAIM** first made against them during the **PERIOD OF INSURANCE** in respect of:

- a) **CONTRACTUAL LIABILITY** in respect of any contract between the **INSURED** and the **INSURED'S CLIENT(s)** including any **CLAIM** for **LIQUIDATED DAMAGES** where the **CLAIM** is made by the **INSURED'S CLIENT(s)**;
- b) negligence or breach of any duty to use reasonable care and skill;
- c) defamation (including but not limited to libel, slander, product disparagement and injurious falsehood) or breach of a comparative advertising statute;
- d) breach of confidentiality, invasion of privacy, or violation of any other legal protections for personal information ;
- e) infringement of intellectual property rights including passing off, false attribution of authorship, breach of copyright, trade mark, service mark, publicity rights, performance rights, music rights, moral rights, performance rights, the unauthorised use of or infringement of the systems or designs of others, misappropriation of any formats, trade names, graphic material or artwork (but not any patent infringement or trade secret misappropriation);

- f) civil liability under The Data Protection Act 1998 and the General Data Protection Regulation (GDPR) (EU) 2016/679 or successor legislation;
- g) liability for dishonesty or fraud of any present or past director, partner, principal or **EMPLOYEE**
- h) Third Party Cyber Liability defined as liability arising from:
  - i. defamation
  - ii. malicious falsehood (including slander of title and slander of goods)
  - iii. unintentional false attribution of authorship or passing off unintentional infringement of intellectual property rights (including copyright, trademark, service mark, moral rights, registered design), breach of confidence or infringement of any rights of privacy
  - iv. unintentional dissemination, distribution or misuse of any information which is either confidential or subject to statutory restrictions in its use
  - v. misuse of the **INSURED's** electronic signature or external email
  - vi. the transmission, receipt or impact of any computer VIRUS
  - vii. HACKING ATTACK(S)

arising in consequence of the conduct of the **INSURED's PROFESSIONAL BUSINESS** transacted via their **COMPUTER SYSTEM**

- i) any other civil liability (but excluding any contractual liability beyond that defined as **CONTRACTUAL LIABILITY**) incurred in the course of any **PROFESSIONAL BUSINESS**.

## 2. DEFENCE COSTS AND EXPENSES

To indemnify the **INSURED** in respect of all reasonable costs and expenses incurred with the prior written consent of **INSURERS** in the defence or settlement of any **CLAIM** which falls to be dealt with under Insuring Clause 1 of this Policy, provided that if a payment in excess of the **LIMIT OF INDEMNITY** has to be made to dispose of such a **CLAIM**, the liability of **INSURERS** for such costs and expenses shall be of such proportion hereof as the **LIMIT OF INDEMNITY** bears to the amount paid to dispose of that **CLAIM**.

## 3. FIDELITY

To indemnify the **INSURED** against their own direct loss or losses which, during the **PERIOD OF INSURANCE**, they shall discover they have sustained by reason of any dishonesty or fraud of any present or past **EMPLOYEE** provided always that:

- a) such dishonest or fraudulent act(s) are carried out by the person(s) concerned with the manifest intent to cause such loss to the **INSURED** or to obtain improper personal gain either for themselves or in collusion with others,
- b) any dishonesty or fraud committed by a person or persons acting in concert shall for the purposes of this Policy be treated as giving rise to one loss and one claim,
- c) such loss or losses shall include indemnity for accountants' fees incurred as a result of such loss, with the prior written consent of **INSURERS**,
- d) the liability of **INSURERS** shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included in and not in addition to the **LIMIT OF INDEMNITY**,
- e) The annual accounts have been prepared and/or certified by an independent accountant or auditor

#### 4. LOSS OF DOCUMENTS

To indemnify the **INSURED** against reasonable costs and expenses necessarily incurred by the **INSURED** with the prior written approval of **INSURERS** in replacing or restoring **DOCUMENTS** either the property of or entrusted to or lodged or deposited with the **INSURED** named in the Schedule, having been discovered during the **PERIOD OF INSURANCE** to have been destroyed, damaged, lost or mislaid and which after diligent search by the **INSURED** cannot be found provided that the liability of **INSURERS** for such costs and expenses shall not exceed GBP50,000 for any one claim and GBP 150,000 in the aggregate during the **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**.

#### 5. DATA PROTECTION PROSECUTION DEFENCE COSTS

To indemnify the **INSURED** in respect of costs and expenses incurred with the prior written consent of **INSURERS** in the defence of any criminal proceedings brought against the **INSURED** during the **PERIOD OF INSURANCE** arising out of any alleged offence under The Data Protection Act 1998 and the General Data Protection Regulation (GDPR) (EU) 2016/679 or similar or successor legislation provided that:

- a) such alleged offence arises out of the course of **PROFESSIONAL BUSINESS** and
- b) the liability of **INSURERS** for any such costs and expenses shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**.

#### 6. LEGAL REPRESENTATION COSTS

To indemnify the **INSURED** in respect of costs and expenses incurred with the prior written consent of **INSURERS**, which are not otherwise indemnified as costs and expenses under Insuring Clause 2, for representation at any properly constituted hearing, tribunal or proceeding having the power to compel the attendance of the **INSURED** notified to **INSURERS** during the **PERIOD OF INSURANCE** provided that:

- a) **INSURERS** reasonably believe that representation could protect the **INSURED** against a **CLAIM** or loss or assist the **INSURED** in the defence of any subsequent or concurrent **CLAIM**, which would otherwise be covered under the Policy and
- b) the liability of **INSURERS** for any such costs and expenses shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**

#### 7. COMPENSATION FOR COURT ATTENDANCE

To compensate the **INSURED** in the event of:

- a) the legal advisers acting on behalf of the **INSURED** with the consent of **INSURERS** requiring any director partner or principal of the **INSURED** or **EMPLOYEE** to attend any court tribunal arbitration adjudication mediation or other hearing as a witness or
- b) **INSURERS** requesting the attendance of any director partner or principal of the **INSURED** or **EMPLOYEE** as an interested party at any mediation in connection with a **CLAIM** made against the **INSURED** and notified under this Policy

**INSURERS** will provide compensation to the **INSURED** at the following rates for each day on which attendance is required:

- a) Directors, partners or principals of the **INSURED** GBP 250
- b) **EMPLOYEES** GBP 100

## EXTENSIONS

The following extensions are only operative if specified in the Schedule of this Policy.

### 8. IRRECOVERABLE FEES

**INSURERS** agree to indemnify the **INSURED** for amounts notified to **INSURERS** during the **PERIOD OF INSURANCE** that the **INSURED** is legally owed (including amounts legally owed by the Insured to sub-contractors or suppliers) which cannot be legally recovered from the **INSURED'S CLIENT** due to the refusal of the **INSURED'S CLIENT** to pay for work done by the **INSURED** for them where such **CLIENT** has reasonable grounds for being dissatisfied with the work and threatens to bring a **CLAIM** for more than the amount owed. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, **INSURERS** will pay the amount owed if they consider that it will avoid a legitimate **CLAIM** for a greater amount. If, following this, a **CLAIM** still arises then the amount paid under this Extension will be deducted from the **LIMIT OF INDEMNITY**. If the **INSURED** eventually recovers the debt then the amount paid by **INSURERS** must be repaid to them less the **INSURED'S** reasonable expenses of recovering the debt due.

### 9. MITIGATION OF LOSS

**INSURERS** agree to indemnify the **INSURED** against costs and expenses reasonably and necessarily incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a **CLAIM** under Insuring Clause 1 of this Policy. The onus of proving that this extension is applicable shall be upon the **INSURED** who will be obliged to give prior written notice to **INSURERS** during the **PERIOD OF INSURANCE** of the intention to take action that will incur such costs and expenses. Any costs and expenses incurred without the prior written approval of **INSURERS** will not be indemnified.

## EXCESS CLAUSE

- a) **INSURERS** shall only be liable for that part of each and every claim made under the Policy which exceeds the **EXCESS**.

It is understood and agreed that if any payment is incurred by **INSURERS** which is the responsibility of the **INSURED**, then such amount shall be reimbursed to **INSURERS** by the **INSURED** forthwith on demand.

- b) The **EXCESS** shall be as specified in the Schedule for Insuring Clauses 1 and 3 and Extensions 1 and 2 (if applicable). The Excess shall apply to each and every **LOSS** arising from a **CLAIM** made against the **INSURED** in respect of Insuring Clause 1 and each and every loss in respect of Insuring Clause 3 and Extensions 1 and 2 (if applicable).
- c) The **EXCESS** shall not be applicable to costs and expenses payable under Insuring Clause 2.
- d) In respect of Insuring Clauses 4, 5 and 6 the **EXCESS** shall be GBP 1000 which shall apply to each and every loss under Insuring Clause 4, each and every prosecution under Insuring Clause 5 and each and every hearing, tribunal or proceeding under Insuring Clause 6.
- e) In respect of Insuring Clause 7 the **EXCESS** shall be nil.

## SPECIAL CONDITIONS

### FAILURE TO MAKE A FAIR PRESENTATION

Notwithstanding the statutory remedies available to **INSURERS** in the event of a qualifying breach of the duty of **FAIR PRESENTATION**, **INSURERS** will not rely on any qualifying breach to avoid the Policy provided that:

- a) where the qualifying breach was neither deliberate nor reckless; and
- b) the **INSURED** agrees to (i) pay additional Premium requested by the **INSURERS**, if any, and (ii) any

additional policy terms; and

- c) where the **INSURED** should have notified a **CLAIM** or **CIRCUMSTANCE** or loss to:
- i. the insurer on risk during any period of insurance prior to this **PERIOD OF INSURANCE**, or
  - ii. **INSURERS** during this **PERIOD OF INSURANCE** prior to obtaining an increase in the limit of indemnity, or other variation of terms,

**INSURERS** will indemnify the **INSURED** only to the extent the **INSURED** would have been indemnified under any more restrictive terms that would have been applied by either that insurer on risk prior to this **PERIOD OF INSURANCE**, or by **INSURERS** during this **PERIOD OF INSURANCE** prior to obtaining the increase in the limit of indemnity or variation of other terms.

In the case of ci) above, where there was no insurer on risk during a period of insurance prior to the **PERIOD OF INSURANCE**, no cover will be afforded under this Policy.

## EXCLUSIONS

The Policy shall not indemnify the **INSURED** against:

### 1. Other Insurance

- a) any **CLAIM** or loss where the **INSURED** is entitled to indemnity under any other insurance(s) (except in respect of any excess beyond the amount which would have been payable under such insurance had this Policy not been effected), or
- b) any claim which should be indemnified by a more specific policy of insurance

### 2. Prior Awareness

- a) any **CLAIM** or **CIRCUMSTANCE** or loss which has been notified under any policy of insurance attaching prior to the inception of this Policy, or
- b) any **CLAIM** or **CIRCUMSTANCE** or loss which was known to the **INSURED** or which should have been known to the **INSURED** at the inception of this Policy

### 3. Employment

- a) any **CLAIM** or loss arising out of any dispute between the **INSURED** and any present or former **EMPLOYEE** or any person who has been offered employment with the **INSURED**, in connection with such employment,
- b) any **CLAIM** or loss arising out of the death of or bodily injury to or disease of or psychological injury to or emotional distress or anguish or shock or sickness of any **EMPLOYEE**

### 4. Death or Bodily Injury

any **CLAIM** or loss arising out of the death, disease, illness or bodily or mental injury (other than emotional distress arising from any libel or slander), of any person, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **PROFESSIONAL BUSINESS** carried on by the **INSURED**

### 5. Property

- a) any **CLAIM** or loss arising out of the ownership, occupation, and/or control by the **INSURED** of any buildings, premises or land or that part of any building owned, leased, occupied or rented by the **INSURE**

- b) any **CLAIM** or loss arising out of loss of or damage to property, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **PROFESSIONAL BUSINESS** carried on by the **INSURED**

#### 6. Controlling Interest

any **CLAIM** brought by or on behalf of:

- a) the **INSURED** or
- b) any firm, company or organisation controlling the **INSURED (s)** or of which any director, partner or principal of the **INSURED (s)** have control

unless such **CLAIM** originates from an independent third party

#### 7. Joint Venture

- a) any **CLAIM** or loss arising from any joint venture conducted with any third party other than in respect of any **CLAIM** or loss arising from **PROFESSIONAL BUSINESS**
- b) any **CLAIM** made by the other party to the joint venture unless such **CLAIM** originates from an independent third party

#### 8. Vehicles

any **CLAIM** or loss arising out of the use of any motor vehicles, aircraft, watercraft or hovercraft by the **INSURED**, or any party acting for or on behalf of the **INSURED**

#### 9. Dishonesty &/or Fraud

any **CLAIM** or loss arising out of any dishonesty &/or fraud of any person after discovery by the **INSURED** in relation to that person of reasonable cause for suspicion of dishonesty or fraud

Furthermore, no indemnity shall be afforded to any person committing or condoning such dishonesty or fraud ; and in the event of a **CLAIM** or loss being sustained as a result of any dishonest or fraudulent act or omission, the amount of indemnity under this policy shall be reduced by an amount equal to the sum of any monies which but for such dishonesty or fraud would be due to any person from the **INSURED** or any monies of such person held by the **INSURED**, shall be deducted from any amount payable under this Policy

#### 10. Trading Losses

any **CLAIM** or loss arising out of any trading losses or trading liabilities incurred by any business managed or carried on by the **INSURED** including loss of any client account or business (other than in respect of indemnity available under the Irrecoverable Fees Extension if applicable).

#### 11. Liability assumed under contract

- a) any **CLAIM** or loss arising out of liability assumed by the **INSURED** under any contractual agreement where the **INSURED** did not take reasonable steps prior to entering into that agreement with a client or before agreement to any alteration to ensure that:
- i. performance of the contract was possible in accordance with the terms and conditions made and agreed by the **INSURED**
  - ii. the **INSURED** could perform the contract to the required specification using the resources known to be available and that performance of the contract was not beyond the capabilities of the **INSURED**
  - iii. liability for consequential loss is avoided or restricted

iv. rights against third parties with whom the **INSURED** have contracted are not restricted

- b) any commercial dispute between the **INSURED** and any business associates including but not limited to suppliers, resellers or original equipment manufacturers unless arising from the **INSURED's** rights to recover payments made in relation to **CLAIMS** paid by **INSURERS** for which the business associate may be liable

## 12. Pollution

any **CLAIM** or loss (including loss of value) arising directly or indirectly from **POLLUTION**

## 13. Territorial Limits

any **CLAIM** or loss arising out of work in connection with contracts carried out in the United States of America or Canada or their territories or possessions

## 14. Legal Jurisdiction (CLAIMS)

any legal proceedings brought against the **INSURED**:

- a) in the United States of America or Canada or their territories or possessions (whether for enforcement of judgement brought in another jurisdiction or otherwise) or in which it is contended that the laws of any country state or political sub-division of the United States of America or Canada or their territories and possessions Canada should apply; or
- b) outside the United States of America or Canada or their territories or possessions for the enforcement of judgement brought in the United States of America or Canada or their territories or possessions

## 15. Radiation

any **CLAIM** or loss whether directly or indirectly caused by, or contributed to, or arising from:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

## 16. Retroactive Date

any **CLAIM** or loss where the cause of such **CLAIM** or loss occurred or was alleged to have occurred prior to the Retroactive Date specified in the Schedule

## 17. Asbestos and Mould

liability arising directly or indirectly from

- a) the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres, or material containing asbestos; or
- b) mould, including (but not limited to) toxic mould; or
- c) exposure to mould, including (but not limited to) toxic mould, asbestos, asbestos fibres, or material containing asbestos; or

- d) the provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connection with mould, including (but not limited to) toxic mould, asbestos, asbestos fibres, or structures or material containing asbestos

#### 18. Terrorism and War

liability arising directly or indirectly from Terrorism or War Risks

For the purposes of this exclusion:

- a) Terrorism means an act of any person acting on behalf of or in connection with any individual or organisation which carries out activities directed towards the overthrowing or influencing by force or violence of Her Majesty's government in the United Kingdom or any government de jure or de facto
- b) War Risks means war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

#### 19. Deliberate Act

save as covered by Insuring Clauses 1.1g and 3 any **CLAIM** or loss arising from a deliberate act of the **INSURED**, or any party acting for or on behalf of the **INSURED**.

#### 20. Market Fluctuation/Investment/Insurance/Financial Services Work

any **CLAIM** or loss:

- a) relating to the financial return of any investment or the depreciation or loss of investments when such financial return depreciation or loss is as a result of normal or abnormal fluctuations in any financial stock commodity or other markets,
- b) relating to any warranty or guarantee relating to the financial return of any investment,
- c) directly or indirectly arising out of any investment of, or direct advice on the investment of, third party funds,
- d) the effecting or maintenance of insurance and/or in connection with the provision of finance and/or advice on financial matters, or any arrangement fee(s), interest, or finance charges of whatsoever nature, that the **INSURED** may be obligated or liable to pay in connection with any bank loans, overdrafts, mortgages, or financial arrangements obtained by the **INSURED** for whatever reason,
- e) directly or indirectly arising out of, or in way involving **FINANCIAL SERVICES WORK**.

#### 21. Insolvency

any **CLAIM** or loss arising from or in any way connected with the insolvency of the **INSURED**

#### 22. Fines Penalties and Punitive Damages

any taxes fines penalties punitive exemplary or aggravated damages where such damages have been identified separately within any award of a court or the multiple portion of any **CLAIM**

#### 23. Goods and Products

- a) any **CLAIM** or loss arising out of the supply of any goods by or on behalf of the **INSURED** or products manufactured constructed altered repaired treated sold supplied or distributed by or on behalf of the **INSURED**:



- i. unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **PROFESSIONAL BUSINESS** carried on by the **INSURED**;
  - ii. other than **DELIVERABLES**
- b) costs and expenses involved in the recall or replacement of any **DELIVERABLES** or the refund of any money paid by a third party in connection with such

#### **24. Directors and Officers and Trustees Liability**

any **CLAIM** against any **INSURED** in their capacity as a director officer or trustee in respect of the performance or non-performance of their duties as a director officer or trustee

#### **25. Known Defects**

any **CLAIM** or loss arising out of the:

- a) failure of **DELIVERABLES** where the **INSURED** had prior reason to believe that the **DELIVERABLES** would be deficient, ineffective or incapable of fulfilling the intended purpose or to perform as specified, warranted or guaranteed
- b) repair, inspection, alteration, correction or replacement of defective **DELIVERABLES**, service or workmanship

#### **26. Virus Transmission**

any **CLAIM** or loss arising out of the transmission, receipt or impact of any computer **VIRUS** unless such **CLAIM** is brought against the **INSURED** by an independent third party.

#### **27. Third Party Suppliers**

any **CLAIM** or loss arising out of:

- a) any inherent defect in any **DELIVERABLES** supplied by a third party
- b) any failure or default by a third party to supply a service

Provided that this Exclusion shall not apply to any amount where the **INSURED** can demonstrate to the **INSURER**'s reasonable satisfaction that the amount is legally recoverable under a written contract with a third party

#### **28. Failure or Interruption of Services**

any **CLAIM** or loss arising from the failure or interruption of internet and/or telecommunication services which is beyond the control of the **INSURED**.

#### **29. Patent and Trade Secrets**

any **CLAIM** or loss arising out of the infringement of any patent and/or use of trade secret

#### **30. Gaming, Gambling and Lotteries**

any **CLAIM** or loss arising out of the outcome or operation of any game, promotion, contest, lottery, competition or special offer including but not limited to that arising out of over or under redemption of price discounts, prizes, awards, vouchers, coupons or other consideration, or where estimates of the level of redemption have not been met

**31. Internet Activities**

any **CLAIM** or loss arising out of any third party material contributed to bulletin boards interactive forums or newsgroups

**32. Payment Processing/Credit, debit and charge cards**

any **CLAIM** or loss arising out of:

- a) the **INSURED** acting as manager of the means of payment in relation to services or goods
- b) the fraudulent use of credit, debit, charge, store cards gift cards or other forms of payment

**33. Offensive Subject Matter**

any **CLAIM** or loss arising out of obscene, blasphemous, discriminatory or pornographic material

**34. Unauthorised Use of Personal Data**

any **CLAIM** or loss arising out of any actual or alleged failure to obtain explicit agreement from any private individual before collecting, storing or sharing any of their personal information

**35. System Security and Back-Up**

any **CLAIM** or loss arising out of any actual or alleged failure on the part of the **INSURED** to:

- a) take all reasonable steps to create and store off site back-up copies of any files, programs data, source code and **DOCUMENTS** held in electronic format at reasonably frequent intervals and to maintain and update programs regularly with software which protects computers and other electronic equipment, world wide websites and networks from unauthorised use or access
- b) protect its' **COMPUTER SYSTEM** by:
  - i. having **VIRUS** protection software operating in place running, correctly configured and regularly updated;
  - ii. having a firewall or similar device to control access; and
  - iii. encrypting and controlling access to its **COMPUTER SYSTEM** and external devices networked to its **COMPUTER SYSTEM**; and
  - iv. controlling unauthorised access to its **COMPUTER SYSTEM** by correctly configuring the wireless network; and
  - v. changing all passwords on info and communicating assets at least 60 days and cancelling passwords if unauthorised access is suspected: and
  - vi. having an operational system to log and monitor user activity on its **COMPUTER SYSTEM**

**36. Specialist Sub-contractors/Consultants**

any **CLAIM** or loss arising out of any actual or alleged failure on the part of the **INSURED** to

- a) ensure that rights of recourse against specialist designers consultants or sub-contractors are not waived or otherwise impaired; and
- b) use reasonable endeavours to ensure that the specialist designers consultants or sub-contractors have in place Professional Indemnity Insurance cover to a limit of indemnity of at least a level equivalent to the **LIMIT OF INDEMNITY**.

## CONDITIONS

### A. The following conditions 1-4 are Conditions Precedent to Indemnity

#### 1. Admission of Liability

The **INSURED** shall not admit liability for, or settle, any **CLAIM** or **CIRCUMSTANCE**, or incur any costs or expenses in connection therewith, without the prior written consent of **INSURERS** who shall be entitled at any time to take over and conduct in the name of the **INSURED** the defence settlement or investigation of any such **CLAIM** or **CIRCUMSTANCE**. Nevertheless neither the **INSURED** nor **INSURERS** shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the **INSURED** and **INSURERS**) shall advise that such proceedings should be contested with the probability of success.

#### 2. Notification

**2.1** The **INSURED** shall give to **INSURERS** as soon as reasonably practicable and in any event not later than 30 days after the end of the **PERIOD OF INSURANCE** details in writing of:

- a) any **CLAIM**, writ, summons and/or process relating to any **CLAIM** or previously notified **CIRCUMSTANCE** served upon them or made against them and/or
- b) the discovery of any loss (or potential loss) to them which is likely to be the subject of indemnity hereunder.

**2.2** The **INSURED** shall give to **INSURERS** notice in writing as soon as reasonably practicable and in any event not later than 30 days after the end of the **PERIOD OF INSURANCE** of:

- a) any **CIRCUMSTANCE** or loss of which the **INSURED** shall first become aware during the **PERIOD OF INSURANCE**,
- b) the discovery of a reasonable cause for suspicion of dishonesty or fraud on the part of a present or past director, partner, principal of the **INSURED(s)** or **EMPLOYEE** whether potentially giving rise to a **CLAIM** or loss under this Policy or not,
- c) the receipt by the **INSURED** of notice of the intention to institute proceedings (including, but not limited to, legal proceedings, dispute resolution proceedings or disciplinary proceedings) against the **INSURED** or requiring the **INSURED** to attend any hearing, tribunal or proceedings.

Notice should be given to the address listed in the Schedule.

Provided notice has been given in accordance with this Condition then any subsequent **CLAIM** made against the **INSURED** or any subsequent loss discovered by the **INSURED** shall be deemed to have been made or discovered during the **PERIOD OF INSURANCE**

#### 3. Co-operation

The **INSURED** shall give such full co-operation to **INSURERS** as they shall reasonably require.

#### 4. Dishonesty and Fraud

**4.1** The **INSURED** shall at the request and expense of **INSURERS** take all reasonable steps to obtain reimbursement from any person committing or condoning any dishonest or fraudulent act or omission or from their estates or legal representatives;

**4.2** If the **INSURED** shall make any claim under this Policy fraudulently or knowing the same to be fraudulent as regards amount or otherwise, **INSURERS** may recover from the **INSURED** any sums that **INSURERS** have already paid to the **INSURED** in respect of the fraudulent claim. **INSURERS** may by notice

to the **INSURED** treat this Policy as terminated with effect from the date of the **INSURED'S** fraudulent act and need not return any of the premium paid.

## **B. The following conditions are General Conditions**

### **5. Subrogation**

If any payment is made under this Policy in respect of a claim and **INSURERS** are thereupon subrogated to the **INSURED'S** rights of recovery in relation thereto it is agreed that **INSURERS** shall not exercise such rights against any **EMPLOYEE** unless such claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or dishonest, fraudulent, criminal or malicious omission of the **EMPLOYEE**.

### **6. Series Clause**

Where a series of **CLAIMS** or losses arise from a breach of or repeated breaches of a single duty or identical duties owed and arising from a single cause all **CLAIMS** and losses within that series shall for the purpose of the **LIMIT OF INDEMNITY** and the **EXCESS** under this Policy be treated as a single claim.

### **7. Legal Jurisdiction (Policy)**

The proper law for the interpretation of this Policy is English Law. The Courts of England and Wales alone shall have jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this Policy and any arbitration proceedings shall be heard and determined solely in England and in accordance with English Law and procedure.

### **8. Arbitration Clause**

Any dispute or difference arising under the terms of this Policy of Insurance between the **INSURED** and **INSURERS** shall be referred to a Queen's Counsel for the purposes of arbitration whose decision will be final and binding such Queen's Counsel to be agreed upon by both parties or, in the absence of agreement, to be nominated by the Chairman of the Bar Council from time to time. **INSURERS** agree to pay the costs of such referral except in those instances where indemnity has been denied and the Queen's Counsel upholds **INSURERS'** decision.

### **9. Contracts (Rights of Third Parties) Act 1999**

With regard to the Contracts (Rights of Third Parties) Act 1999 the **INSURED** and **INSURERS** agree and acknowledge that:

- a) this Policy does not, and is not intended to, confer any enforceable rights upon any Third Party, notwithstanding that **INSURERS** may, or may not, have acknowledged the interest of any Third Party,
- b) the parties to this Policy are, subject to agreement between **INSURERS** and the **INSURED** at their sole discretion, entitled to alter, amend, or cancel this Policy without reference to, or seeking the consent of, any Third Party, notwithstanding that **INSURERS** may, or may not, have acknowledged the interest of any Third Party,
- c) in the event that any Third Party seeks to enforce the provisions of this Policy in proceedings, **INSURERS** will have available to them the same defences or right of set-off as though such proceedings had been brought by the **INSURED**.

### **10. Relinquish Control by Payment of Claim**

In connection with any **CLAIM**, **INSURERS** may at any time pay to the **INSURED** the **LIMIT OF INDEMNITY** less any sums already paid or any less amount for which such **CLAIM(S)** can be settled and thereupon **INSURERS** shall relinquish control of such **CLAIM(S)** and be under no further liability in connection therewith except for costs and

expenses for which **INSURERS** may be responsible under this Policy in respect of matters prior to the date of such payment.

#### 11. Premium Payment

The **INSURED** undertakes that the premium will be paid in full to **INSURERS** within 60 days of the inception date shown in the Schedule. If the premium due under this Policy has not been so paid to **INSURERS**, then **INSURERS** shall have the right to cancel this Policy ab initio.

It is agreed that **INSURERS** shall give not less than 14 days prior notice of cancellation to the **INSURED** in writing, via their broker, where applicable. If the premium due is paid in full to **INSURERS** before the notice period expires, notice of cancellation shall automatically be revoked

#### 12. Entity to act as Agent

All persons falling within the definition of the **INSURED** agree that the first **INSURED** named in the Schedule is their agent for all purposes in connection with this policy. This Policy may be varied or rescinded by agreement between **INSURERS** and this firm without the consent of any other person falling within the definition of the **INSURED** or otherwise.

#### 13. Sanctions

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

#### DEFINITIONS:

For the purpose of this Policy the following definitions are to apply:

##### 1. CIRCUMSTANCE:

shall mean an incident, occurrence, fact, matter, act or omission that might give rise to a **CLAIM**

##### 2. CLAIM:

shall mean a written communication asserting a legal liability on the part of the **INSURED**

##### 3. CLIENT:

shall mean any entity or person with whom the **INSURED** has contracted with to provide services or **DELIVERABLES** that expressly fall within the **INSURED' PROFESSIONAL BUSINESS**

##### 4. COMPUTER SYSTEM:

shall mean any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode used owned operated or relied upon by the **INSURED**.

##### 5. CONTRACTUAL LIABILITY:

shall mean :

- a) unintentional breach of any contract to design produce or supply **DELIVERABLES** by reason of the **DELIVERABLES**:

- i. failing materially to conform to any specification forming part of such contract or
- ii. failing to meet any implied statutory term concerning quality safety or fitness for purpose or
- iii. containing a material defect

b) unintentional breach of any duty assumed under a contract to exercise reasonable care and skill

#### 6. DELIVERABLES:

shall mean any hardware, software, firmware, peripherals, network cabling or electronic equipment

#### 7. DOCUMENTS:

shall mean deeds, wills, agreements, maps, plans, records, books, letters, policies, computer system records, forms and documents of whatsoever nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments).

#### 8. EMPLOYEE:

shall mean any person, including any trainee or consultant, other than a director partner or principal in the **INSURED** named in the Schedule, who is or has been under a contract of service or apprenticeship with the **INSURED** named in the Schedule, whilst employed by and under the control of the **INSURED** in connection with the **PROFESSIONAL BUSINESS**.

#### 9. EXCESS:

shall mean the amount for which the **INSURED** is responsible under this Policy.

#### 10. FAIR PRESENTATION:

shall have the same meaning as found in s.3(3) Insurance Act 2015 or similar or successor legislation.

#### 11. FINANCIAL SERVICES WORK:

shall mean regulated activities as more fully described in the Financial Services and Markets Act 2000 or the Central Bank and Financial Services Authority of Ireland Act 2004 or similar or successor legislation and regulations made thereunder.

#### 12. HACKING ATTACK:

shall mean any malicious or unauthorised electronic attack including but not limited to phishing or denial of service that is designed to damage, destroy, corrupt, overload, circumvent or adversely affect the functionality of any **COMPUTER SYSTEM**.

#### 13. INSURED:

shall mean any of the following:

- a) the entity named in the Schedule and the predecessors in business of the said entity as disclosed to **INSURERS**
- b) those persons named in the last completed **PROPOSAL** and any other person or persons who have subsequently become director(s)/partner(s)/principal(s) in the **INSURED(s)** named in the Schedule prior to the expiry of the **PERIOD OF INSURANCE**,

any former director(s)/partner(s)/principal(s) of the **INSURED(s)** named in the Schedule for services performed for and on behalf of the **INSURED(s)** named in the Schedule including director(s)/partner(s)/principal(s) remaining as consultants to the **INSURED(s)** named in the Schedule

**c) any EMPLOYEE**

the estates and/or legal representatives of any of the persons noted under b), c) or d) hereof in the event of their death, incapacity, insolvency, or bankruptcy,

**14. INSURERS:**

shall mean the Arch Insurance (UK) Ltd

**15. LIMIT OF INDEMNITY:**

shall mean the amount specified in the Schedule being the maximum amount payable by **INSURERS** irrespective of the number of claimants or number of **INSUREDs** under Insuring Clause 1 or under the Extensions if applicable (excluding costs and expenses payable under Insuring Clause 2) in respect of any one claim

**16. LIQUIDATED DAMAGES:**

shall mean a sum of money or method of calculating such a sum, agreed as part of the **INSURED's** contract with their **CLIENT** as an amount payable in the event of a specified breach of the contract, provided that at the time such sum or method was agreed it represented a fair and reasonable estimate of the **CLIENT's** losses as a result of the breach. Such sum of money or method cannot exceed that which would have been recoverable had the amount been payable under a common law **CLAIM** for **CONTRACTUAL LIABILITY**

**17. LOSS:**

shall mean any and all damages, compensation and interest, including claimants' costs and expenses, payable by an **INSURED** whether by judgement, arbitration award or otherwise or agreed in any settlement.

**18. PERIOD OF INSURANCE:**

shall mean the Period of Insurance specified in the Schedule.

**19. POLLUTION:**

shall mean contamination by naturally occurring or man-made substances, forces or organisms or any combination of them whether permanent or transitory and however occurring.

**20. PROFESSIONAL BUSINESS:**

shall mean professional services performed for or professional advice given to a third party by or on behalf of the **INSURED** in relation to the activities declared in the **PROPOSAL**

**21. PROPOSAL:**

shall mean all the written information supplied by the **INSURED** in whatever format to **INSURERS** and/or any **STATEMENT OF FACT** document.

**22. STATEMENT OF FACT:**

shall mean the document which provides details of the **INSURED** and all material information relevant to this Policy and assumptions made by **INSURERS** about material information which the **INSURED** is required to correct with **INSURERS** as soon as possible if incorrect.

**23. VIRUS:**

shall mean any un-authorized or malicious program or code that possesses the ability to replicate itself through a computer system which contains instructions to damage, destroy, corrupt, overload, circumvent or adversely affect the functionality of such computer system whether termed a virus, logic bomb, worm, Trojan Horse or known by any other name.



## PRIVACY NOTICE

### Personal information

Your insurance cover may include cover for individuals who are either insureds or beneficiaries under the policy ("*individual insureds*"). We and other insurance market participants collect and use relevant information about individual insureds to provide you with your insurance cover and to meet our legal obligations.

### Your Obligations

To enable us to use individual insureds' details in accordance with applicable data protection laws, we need you to provide those individuals with certain information about how we will use their details in connection with your insurance cover.

You agree to provide to each individual insured our personal information notice, which we have provided to you below, on or before the date that the individual becomes an individual insured under your insurance cover or, if earlier, the date that you first provide information about the individual to us.

You must promptly notify us if an individual insured contacts you about how we use their personal details in relation to your insurance cover so that we can deal with their queries.

### Minimisation and notification

We are committed to using only the personal information we need to provide you with your insurance cover. To help us achieve this, you should only provide to us information about individual insureds that we ask for from time to time.

### Personal information notice

#### ***The basics:***

We collect and use relevant information about you, to provide the insurance cover that benefits you and to meet our legal obligations. This information includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose such information in connection with the insurance cover that we provide and to the extent required or permitted by law.

Depending on the circumstances, the use of your personal information may involve a transfer of data outside the UK and the European Economic Area to countries that have less robust data protection laws. We will endeavour to ensure that any such transfer is made with appropriate contractual safeguards in place.

We will not keep your information for longer than necessary. Under normal circumstances, this will be for no longer than seven years after the insurance cover that benefits you ends, though for some types of insurance, we may be required to retain data for longer due to our legal or regulatory obligations

#### ***Other people's details you provide to us:***

Where you are providing us with personal information about a person other than yourself, you must provide this notice to them.

#### ***Where to find more details, contacting us and your rights:***

You have rights in relation to the information we hold about you, including the right to access a copy of your information (and have this transferred to a third party) or request rectification of your information if it is inaccurate or incomplete. If you wish to exercise your rights or would like more details about how we use your personal information please see our full privacy notice, which is available online at [www.archcapgroup.com](http://www.archcapgroup.com) or contact us using the details provided.