

DUAL EVOLUTION (Accountants)

THIS IS A CLAIMS MADE CERTIFICATE

Whereas a representative of the *Insured* has made to the *Insurers* a written proposal containing particulars and statements made to the best of the representative's knowledge and belief which, together with any other information supplied to *Insurers* shall be incorporated into this contract.

SECTION A: INSURING CLAUSES

In consideration of the payment or the promise of payment to *Insurers* of the premium specified in the *Schedule* *Insurers* agree:

A.1 Civil Liability

To indemnify the *Insured* in respect of any *Claim* or *Claims* first made against the *Insured* during the *Period of Insurance* in respect of any civil liability (including liability for *Claimants'* costs, expenses and disbursements) arising out of and/or in connection with the conduct of any *Professional Business* carried on by, or on behalf of, the *Insured*

A.2 Awards by Ombudsmen

To indemnify the *Insured* against any amount paid and/or payable and/or the costs of taking any steps which the *Insured* is directed to take pursuant to or by the recommendation of any Ombudsman appointed pursuant to the provisions of the Financial Services and Markets Act 2000, the Central Bank and Financial Services Authority of Ireland Act 2004 or any amendment or re-enactment thereof to the same extent as *Insurers* are obliged under this Certificate to indemnify the *Insured* in respect of any civil liability.

A.3 Defence Costs

To indemnify the *Insured* in respect of *Defence Costs* provided that if a payment in excess of the amount of indemnity available under this Certificate has to be made to dispose of any *Claim* or *Claims* against the *Insured*, *Insurers'* liability for *Defence Costs* shall be only that proportion which the limit of indemnity available under this Certificate bears to the amount which is required to be paid to dispose of such *Claim* or *Claims*.

For the avoidance of doubt, the limit of indemnity specified in the *Schedule* is exclusive of *Defence Costs*, and *Defence Costs* shall be paid by *Insurers* over and above and in addition to sums paid pursuant to clause A1 and/or clause A2 and/or the limit of indemnity.

SECTION B: DEFINITIONS

B.1 "ALTERNATE" means any individual practitioner, partnership, limited liability partnership, Isle of Man limited liability company or company who or which is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.

B.2 "CLAIM" means any written or oral demand for compensation or damages from, or the assertion of a right against, any *Insured* and shall be deemed to include any complaint or reference to any Ombudsman appointed pursuant to the provisions of the Financial Services and Markets Act 2000, the Central Bank and Financial Services Authority of Ireland Act 2004 or any amendment or reenactment thereof ("the Ombudsman") which arises out of the conduct of *Professional Business* carried on by, or on behalf of, the *Insured*.

B.3 "CLAIMANT" means a person or entity which has made or may make a *Claim* including (without limitation) a *Claim* for contribution or indemnity, and shall be deemed to include a complainant to the Ombudsman.

B.4 "DEFENCE COSTS" means any costs, disbursements and expenses incurred by the *Insured* with the written consent of *Insurers* (such consent not to be unreasonably withheld) in:

- (a) any *Claim* or any proceedings relating to any *Claim*;
- (b) conducting any proceedings for an indemnity, contribution, damages or other recovery relating to a *Claim*;
- (c) investigating, reducing, avoiding or settling any actual or potential *Claim*; or
- (d) investigating any circumstance which is notified to *Insurers* in accordance with the terms of this Certificate.

B.5 "DIRECTOR" shall have the meaning given by section 1173 of the Companies Act 2006, section 2 of the Companies Act 1963 of the Republic of Ireland or section 27 of the Companies Act 1990 of the Republic of Ireland (as appropriate) or any amendment or re-enactment thereof.

B.6 "FIRM(S)": wherever the word "Firm(s)" appears herein the same shall be deemed to read "the firm(s) (ie partnership(s)) or sole practitioner(s) or company(ies) (limited or otherwise) or limited liability partnership(s) or Isle of Man limited liability company(ies) or any other entity(ies) named in the *Schedule*, and, save for the purposes of clause C3.3, it includes the predecessors in business of the said Firm(s).

B.7 "INSURED" means each and all of the following persons, each of whom shall be severally insured hereunder:

- (a) Any *Firm(s)*;
- (b) *Partners* or *Directors* or *Members* of the *Firm(s)* (or named as the principal where, although the trading style of the *Insured* is such that it appears to be a Firm, in fact the *Insured* is a sole practitioner) and any other person who may at any time during the *Period of Insurance* become a *Partner* or *Director* or *Member* in the *Firm(s)*;

- (c) Any former *Partner* or *Director* or *Member* of the *Firm(s)* including any such former *Partner* or *Director* or *Member* whilst acting as a consultant to the *Firm(s)*;
- (d) Any person who is or has been under a contract of service with the *Firm(s)*;
- (e) Any person who is or has been under a contract for *Services* with the *Firm(s)*, save that such person shall only be an *Insured* for the purpose of this Certificate if and insofar as any *Claim* or *Claims* arise out of *Professional Business* carried on by such person for or on behalf of the *Firm(s)*;
- (f) The estates and/or legal representatives of any *Insured Person* noted under (b), (c), (d) or (e) hereof in the event of death, incapacity, insolvency or bankruptcy; or
- (g) Any person who is acting on behalf of the *Firm(s)* as an *Alternate*.

B.8 "INSURED PERSON" means any natural person insured hereunder.

B.9 "INSURERS" means the underwriter or underwriters (as the case may be) of this Certificate as specified in the Insurer Details.

B.10 "MEMBER" means any member of a limited liability partnership, including, without limitation, a designated member.

B.11 "PARTNER" shall have the meaning given by the Partnership Act 1890.

B.12 "PERIOD OF INSURANCE" means the period of insurance specified in the Schedule

B.13 "PROFESSIONAL BUSINESS" means advice given or *Services* provided of whatsoever nature by or on behalf of the *Insured* to a third party, wherever or by whomsoever given or provided irrespective of whether or not a fee is charged, but provided that if a fee is charged in respect of such advice or service then that fee is taken into account in ascertaining the income of the *Firm(s)*.

The above definition of "Professional Business" shall be deemed to extend to any of the *Insured* whilst holding any individual personal appointment (including, but without prejudice to the generality of the foregoing, any appointment as a trustee or personal representative made or accepted in the course of the *Insured's* business), but whilst holding an appointment as company secretary or registrar or *Director* of a company which is not a *Firm* it only extends to the performance of *Services* as defined in clause B15.

B.14 "SCHEDULE" means the Schedule to this Certificate.

B.15 "SERVICES" provided whilst holding the appointment of company secretary, registrar or *Director* as referred to in the definition of "*Professional Business*" in clause B13 shall mean all services performed or advice given by the *Insured* in connection with tax matters, secretarial work, share registration, financial advice to management, book-keeping, management accounting, financial investigation and reports, the negotiation and settlement of financial claims, company formations, investment advice, insurance and pension scheme advice and computer consultancy.

SECTION C: GENERAL CONDITIONS

C.1 Limit of indemnity

The liability of *Insurers* to indemnify the *Insured* in respect of Any One *Claim* shall not exceed the sum specified in the Schedule.

In this Endorsement Any One *Claim* shall mean all *Claims* arising from one and the same act, error or omission or any series of acts, errors or omissions arising out of the same cause, or the acts, errors or omissions of one person or persons acting together, or in which such person or persons is/are concerned or implicated.

C.2 Notification

C.2.1 The *Insured* shall give to *Insurers* notice in writing as soon as reasonably practicable and in any event not later than 7 days after the end of the *Period of Insurance* of:

- (a) any *Claim*;
- (b) the receipt by the *Insured* during the *Period of Insurance* of any notice from any person of an intention to make a *Claim*. Any *Claim* arising therefrom and/or in connection therewith shall be deemed to have been first made during the *Period of Insurance*; or
- (c) the discovery during the *Period of Insurance* of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present *Partner*, *Director*, *Member*, employee, consultant, sub-contractor or *Alternate* of the *Firm(s)*, whether giving rise to a *Claim* under this Certificate or not.

C.2.2 If during the *Period of Insurance* the *Insured* becomes aware of any circumstance which may give rise to a *Claim*, the *Insured* shall give notice in writing of such circumstance to *Insurers* as soon as reasonably practicable and in any event not later than the last day of the *Period of Insurance*. Any *Claim* arising from such circumstance shall be deemed to have been first made in the *Period of Insurance*.

C.3 Excess

C.3.1 If an amount is specified in the Schedule, this amount shall be borne by the *Insured* at their own risk and *Insurers'* liability to indemnify the *Insured* shall only be in excess of this amount.

C.3.2 The amount specified in the Schedule shall not be applicable to *Defence Costs* (unless the *Claim* arises from the conduct of *Professional Business* which required authorisation by the Financial Services Authority).

C.3.3 Notwithstanding any amount specified in the Schedule the maximum amount to be borne by the *Insured* at their own risk during the *Period of Insurance* shall not exceed the maximum calculated in accordance with the relevant provisions of the Professional Indemnity Insurance Regulations of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable in force at the date of the inception or renewal of this Certificate.

C.4 Dishonesty and Fraud

C.4.1 Subject to clause C5, in the event that the *Insured* incurs any liability insured by this Certificate by reason of the dishonest or fraudulent act or omission of any former or present *Partner, Director, Member*, or employee, consultant, sub-contractor or *Alternate* of the *Firm(s)* no indemnity shall be afforded hereunder in respect of such *Claim* to any person committing or condoning any such dishonest or fraudulent act or omission.

C.4.2 Notwithstanding the provisions of clause C4.1, an indemnity shall be afforded hereunder to each and every person who has neither committed nor condoned any such dishonest or fraudulent act or omission.

C.4.3 In respect of any such *Claim* (i.e. as referred to in clause C4.1):

- (a) the *Insured* shall at the request and expense of *Insurers* take all reasonable steps to obtain reimbursement from any person committing or condoning any such dishonest or fraudulent act or omission or from their estates or legal representatives;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons (ie the persons committing or condoning any such dishonest or fraudulent act or omission) from the *Insured* or any monies of such persons held by the *Insured* shall be deducted from any amount payable under this Certificate; and
- (c) nothing in this clause C4 shall preclude *Insurers* from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission.

C.4.4 The sums payable under this Certificate shall be only for the balance of any civil liability in excess of the amounts recovered from the person or persons committing or condoning dishonest or fraudulent acts or omissions as aforesaid or their estates or legal representatives.

C.5 Advancement of Defence Costs

Notwithstanding the provisions of clause C4, and subject to clause C3.2 and C10.2, *Insurers* will indemnify the *Insured* in respect of *Defence Costs* as and when they are incurred, including *Defence Costs* incurred on behalf of an *Insured* who is alleged to have committed or condoned a dishonest or fraudulent act or omission, provided that *Insurers* are not liable for *Defence Costs* incurred on behalf of such *Insured* after the earlier of

- (a) the *Insured* admitting to *Insurers* the commission or condoning of such dishonest or fraudulent act or omission; or
- (b) a court or other judicial body finding that the *Insured* was in fact guilty of such dishonest or fraudulent act or omission. Each *Insured* who admits to *Insurers* the commission or condoning of such dishonest or fraudulent act or omission, or against whom there is a finding of a court or other judicial body that such *Insured* was in fact guilty of such dishonest or fraudulent act or omission shall reimburse *Insurers* in respect of *Defence Costs* advanced on that *Insured's* behalf.

C.6 Conduct of Claims

C.6.1 The *Insured* shall:

- (a) not admit liability for, or settle, any *Claim* without the written consent of *Insurers* (such consent not to be unreasonably withheld or unreasonably delayed); and
- (b) not incur any costs or expenses in connection with any *Claim* or any circumstance without the written consent of *Insurers* (such consent not to be unreasonably withheld or unreasonably delayed);

C.6.2 *Insurers* shall be entitled at their own expense at any time to take over and conduct in the name of the *Insured* the defence, investigation or settlement

C.6.3 of any *Claim* and to conduct an investigation into circumstances notified under clause C2.2 which may give rise to a *Claim* and to receive at all times the full co-operation of the *Insured* for this purpose. The *Insured* shall be entitled to any and all information and/or documentation regarding the defence investigation or settlement of any *Claim* and/or the investigation into any circumstances as they may reasonably request from *Insurers*.

C.6.4 Compliance by the *Insured* with any rules, requirements, directions or guidance of any Ombudsmen appointed pursuant to the provisions of the Financial Services and Market Act 2000, the Central Bank and Financial Services Authority of Ireland Act 2004 or any amendment or re-enactment thereof will not constitute a breach of any clause of this Certificate.

C.7 Queen's Counsel Clause

Neither the *Insured* nor *Insurers* shall be required to contest any legal proceedings unless a Queen's Counsel or in the Republic of Ireland a Senior Counsel (to be mutually agreed upon by the *Insured* and *Insurers* or failing agreement to be appointed by the President of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable) shall advise that, taking due account of the interests of both *Insurers* and *Insured*, such proceedings should be contested.

C.8 General Subrogation Rights

Insurers shall not exercise any right of subrogation in the name of any *Insured* against any other *Insured* except:

- (a) against a person who is an *Insured* within the definition of clause B7(e) and the Firm has not notified such person to *Insurers* or previous insurers; and/or
- (b) as provided in clause C4.3(c).

C.9 Fraudulent Claims

If any *Insured* shall make a *Claim* for indemnity under this Certificate knowing the same to be false or fraudulent as regards amount or otherwise, this Certificate shall, in respect of that *Insured* only, be avoided ab initio. The Certificate shall continue in full force and effect for the benefit of all other *Insureds* as if such false or fraudulent *Claim* had not been made.

C.10 Dispute Resolution

C.10.1 Any dispute between the *Insured* and/or *Insurers* arising out of or in connection with this Certificate shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by the *Insured* and *Insurers*, or, failing agreement, to be appointed by the President of the Institute of Chartered Accountants in England and Wales/Scotland/Ireland as applicable) whose decision shall be final and binding on the parties.

C.10.2 In the event of any dispute concerning liability to indemnify the *Insured* (including without limitation a dispute as to the policy year under which any *Claim* or circumstance might fall to be dealt with between (a) *Insurers* and (b) any insurer(s) subscribing to the policy corresponding to this Certificate in respect of a previous period of insurance), the *Insured* and the *Insurers* agree that *Insurers* will advance *Defence Costs* and indemnify the *Insured* in accordance with clauses A1 -A3 and clause C5 above pending resolution of any such dispute.

C.11 Choice of Law

This Certificate shall be governed by and construed in accordance with the laws of England and Wales/ Scotland/ Ireland as applicable. To the extent that any of the provisions of clause C10 may fail and/or for the purposes of any application under the Arbitration Act 1996, the courts of England and Wales/Scotland/Ireland as applicable shall have exclusive jurisdiction to hear and determine any disputes, suits, actions or proceedings that may arise out of or in connection with this Certificate.

C.12 Cancellation

C.12.1 This Certificate may not be cancelled unless the *Insured* and *Insurers* agree mutually in writing to cancel the Certificate.

C.12.2 In the event of such agreement, *Insurers* shall within 7 days of the date upon which such agreement in writing is reached, write to:

- (a) the *Insured* at the address shown in the *Schedule* notifying the *Insured* that the Certificate will be cancelled with effect from a date not less than 30 days after the date of such agreement;
- (b) the relevant Institute, being the Institute of Chartered Accountants in England and Wales the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, notifying it of the agreement, the effective date of cancellation and the name of the *Insured*.

C.13 No set-off

Any amount payable by *Insurers* by way of indemnity under this Certificate in respect of the *Insured's* civil liability to a *Claimant* will be paid only to the *Claimant*, or at the *Claimant's* direction. *Insurers* are not entitled to set off against any sums which are payable under this Certificate any payment due to them from any *Insured* including, without limitation, any payment of premium or any payment due to *Insurers* by way of reimbursement. Notwithstanding the provisions of this clause C13, *Insurers* shall only be obliged to pay any amount payable by way of indemnity in excess of any amount specified in the *Schedule* and as provided in clause C3.

C.14 Third Party Rights

A person who is not a party to this Certificate has no rights 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 terms of this Certificate. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

C.15 Other Insurance

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

SECTION D: SPECIAL CONDITIONS

D.1 Non Avoidance and Prejudice

D.1.1 *Insurers* will not avoid this Certificate or claim to be discharged from any liability to provide any indemnity under this Certificate, on the grounds of any alleged non-disclosure or misrepresentation of facts or untrue statements in the proposal form or in any other information which may have been supplied by or on behalf of the *Insured* to *Insurers*, provided always that the *Insured* shall establish to *Insurers'* reasonable satisfaction that such alleged non-disclosure, misrepresentation of fact or untrue statement was free of any fraudulent conduct or intent to deceive.

D.1.2 In the event that any circumstance is notified to *Insurers* and the *Insured* had knowledge prior to the *Period of Insurance* of such circumstance and the *Insured* should have notified it under any previous policy (whether with

other insurers or not) the indemnity hereunder shall be limited to the indemnity which would have been available under the earliest such previous policy if such circumstance had been properly notified.

D.2 Non-Compliance

D.2.1 Where the *Insured's* breach of or non-compliance with any condition of this Certificate has resulted in prejudice to the *Insurers*:

- (a) in the handling or settlement of any *Claim* against the *Insured*; or
- (b) in the obtaining of reimbursement from any dishonest or fraudulent person as referred to in clause C4.3, the indemnity afforded hereunder (including liability for *Claimants'* costs, expenses and disbursements) shall be reduced to such sum as in the *Insurers'* reasonable opinion would have been payable by them in the absence of such prejudice

SECTION E: EXCLUSIONS

This Certificate shall not indemnify the *Insured* against any *Claim*:

- E.1 Which is the subject of proceedings brought in any court of the United States of America or Canada or arises from *Professional Business* carried out from any office of the *Insured* situated in the United States of America or Canada.
- E.2 Arising directly or indirectly from:
 - (a) bodily injury, mental injury, psychological injury, anguish, emotional distress, shock, sickness, disease or death sustained by any *Insured Person*; and/or
 - (b) any dispute between the *Insured* and any person who is or has been or has made an application to be under a contract of service with the *Insured*.
- E.3 For death of or bodily injury to or psychological injury, emotional distress or anguish, shock, sickness or disease of any person (not being an *Insured Person*), save that this exclusion will not apply to any *Claim* for psychological injury, emotional distress or anguish or shock which arises from any actual or alleged breach of duty in the performance of (or failure to perform) *Professional Business*.
- E.4 For physical loss of or damage to property, save that this exclusion will not apply to any *Claim* for loss of or damage to property which arises from any actual or alleged breach of duty in the performance of (or failure to perform) *Professional Business*.
- E.5 Arising directly or indirectly from the ownership, possession or use by the *Insured* of land, buildings, aircraft, watercraft, vessels or mechanically propelled vehicles.
- E.6 Arising out of any circumstance which has been notified under any other policy of insurance attaching prior to the inception of this Certificate.
- E.7 In respect of dishonest or fraudulent acts or omissions committed by any person after discovery or reasonable cause for suspicion of fraud or dishonesty on the part of that person.
- E.8 Arising out of or in connection with any trading losses or trading liabilities incurred by any business managed by or carried on by the *Insured*, but this exclusion is not to apply to any *Claims* made against the *Insured* for negligence in the normal course of their conduct of any receivership or procedures under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or in the Republic of Ireland any receivership or insolvency procedures under the Companies Acts 1963 to 2005 or the Bankruptcy Act 1988 or any amendment or re-enactment thereof.
- E.9 Arising out of the giving of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments.
- E.10 Directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or from war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- E.11 Save for the purposes of clauses C4.3(a) and C4.3(c), by one *Insured* against another *Insured*.
- E.12 For any fine or penalty or any multiple damages, exemplary or punitive damages or aggravated damages, save that:
 - (a) this exclusion will not apply to any *Claim* relating to any actual or alleged defamation arising out of the conduct of *Professional Business* carried on by, or on behalf of the *Insured*; and
 - (b) this exclusion will not operate to exclude or limit (or be construed as excluding or limiting) the scope of indemnity afforded by clause A2.
- E.13 Arising from any *Claim* made against an *Insured* directly or indirectly caused by, resulting from or in any way in connection with terrorism. For the purpose of this exclusion an act of 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. Provided that any such exclusion does not exclude or limit any liability of *Insurers* to indemnify any *Insured* against civil liability or related

Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) *Professional Business*. In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- E.14** Arising out of or relating directly or indirectly to or in consequence of seepage, pollution or contamination of any kind, save that this exclusion will not apply to any *Claim* which arises from any actual or alleged breach of duty in the performance of (or failure to perform) *Professional Business*.
- E.15** Arising directly from goods sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the *Insured* or by any person, acting for or on behalf of the *Insured*. For the avoidance of doubt, the term 'goods' as referred to above shall apply to Packaged Software, but shall not apply to any other computer software or any amendments or adaptations of Packaged Software. Packaged Software shall mean any software produced by a third party that is marketed for general distribution on a wholesale or retail basis. For the avoidance of doubt, this exclusion shall not apply to any *Claim* arising from amendments or adaptations made to Packaged Software by or on behalf of the *Insured*.
- E.16** Arising directly from any liability assumed by the *Insured* under any express warranty or guarantee unless such liability would have attached to the *Insured* notwithstanding such express warranty, or guarantee.