

DUAL EVOLUTION (Information Technology)

THIS IS A CLAIMS MADE CERTIFICATE

Section 1: Preamble

- 1.1** In consideration of the payment of the *Premium* in accordance with the agreed payment provisions, We shall during the *Certificate Period* and subject to the Certificate terms provide the cover described in this Certificate.
- 1.2** The cover under this Certificate commences upon the payment of the *Premium* which payment is a condition precedent to our liability under this Certificate, unless agreed otherwise in writing.

Section 2: Insuring Clause

- 2.1** We agree to indemnify the *Insured* against their liability for any *Claim* first made against the *Insured* and notified to *Us* during the *Certificate Period* in accordance with Claim Condition 8.1 in respect of any:
- (i) Breach of a contract to develop, design, create, supply, distribute, write, install or maintain any *IT Goods and Services* caused by or arising from:
 - a. failure to perform (or non conformity) in all or predominantly all material respects with a written specification which forms part of the relevant contract and where it is expressly agreed that the *IT Goods and Services* must comply with such written specification
 - b. a defect in the *IT Goods and Services*
 - c. the unintentional breach of any implied statutory term relating to quality, fitness or safety pursuant to (i) Section 13 of the Sale of Goods Act 1979 (ii) Section 14 of the Supply of Goods and Services Act 1982 (iii) any other similar legislation in any other country or jurisdiction shown in the Schedule or (iv) common law relating to (i) or (ii) of this sub section (c)
 - (ii) Defects in or failure to perform *IT Goods and Services* arising from negligence;
 - (iii) Unintentional breach of confidentiality or misuse of information;
 - (iv) Unintentional breach or infringement of intellectual property rights which shall include copyright, patent, trademark or design or any acts of passing off

Arising from breach of professional duty by the *Insured* or by any *Employee* of the *Insured* in the conduct of the *Professional Business* by the *Insured*.

- 2.2** We also agree to pay *Costs* either incurred by *Us* or incurred by the *Insured* with our prior written consent.

Section 3: Automatic Extensions

The automatic extensions are subject to the Insuring Clauses and all other Certificate terms.

We agree to cover the *Insured*:

3.1 Sub-Consultants

For the *Insured's* liability in respect of any sub-consultants undertaking work for the *Insured* as a sub-consultant and whose acts, errors or omissions are arising from the *Professional Business* provided always that the *Insured's* rights of subrogation as contained in General Condition 9.3 are not waived or otherwise amended to *Our* detriment by the *Insured*. The *Insured* shall have a written contract which shall include a provision between the sub-consultant and the *Insured* to indemnify the *Insured* against any liability incurred by the *Insured* as a result of the sub-consultant's performance on behalf of the *Insured*. The *Insured* shall also take all reasonable steps to ensure that the sub-consultant has and maintains professional indemnity insurance with an appropriate limit of Indemnity no lower than GBP 1,000,000 unless agreed otherwise by *Us* in writing.

3.2 Loss of Documents

For expenses reasonably and necessarily incurred by the *Insured* in replacing or restoring *Documents* that after a diligent search cannot be located or that have been destroyed or damaged beyond reasonable use and for which the *Insured* is legally responsible and which were in the physical custody or control of the *Insured* or any other person to whom the *Insured* entrusted, lodged or deposited such *Documents* provided

- (a) The loss of the documents is first discovered during the *Certificate Period*; and

- (b) The *Insured* notifies *Us* within 30 days and within the *Certificate Period* of discovery of the loss of the documents; and
- (c) The *Insured* provides *Us* with bills and accounts substantiating the expenses incurred by the *Insured* in replacing or restoring the lost *Documents*;
- (d) The expenses are not incurred without *Our* prior written consent and *We* approve, or a competent person nominated by *Us*, approves the bills and accounts; and
- (e) The replacement or restoration of the lost *Documents* is reasonably required.

Our total liability under this extension for any one *Claim* and in the aggregate from all *Claims* during the *Certificate Period* shall not exceed GBP 100,000

3.3 Joint Venture Liability

For the *Insured's* liability, where the *Insured* is engaged in a joint venture but restricted to liability in respect of work performed solely by the *Insured* arising from the conduct of the *Professional Business*.

For the avoidance of doubt *We* will not cover any liability of the joint venture partner nor any liability arising from work performed by the joint venture partner, unless agreed otherwise by *Us* in writing.

3.4 Libel & Slander

For the *Insured's* liability arising from the *Insured* committing libel or slander in the conduct of the *Professional Business* by the *Insured*.

3.5 Compensation for Attendance

For the cost of attendance at a court formal hearing or formal interview by any principal, partner, member or director or *Employee* of the *Insured* in connection with a *Claim* or *Circumstance* notified to *Us* where such attendance is considered by *Us* to be necessary or beneficial to reduce liability which may result in a payment under this Certificate. The cover is subject to:

- (a) *Our* having given *Our* prior written agreement to the attendance;
- (b) Indemnity for such costs being restricted to a rate of GBP 250 per principal, partner, member or director of the *Insured* per day and GBP 200 per *Employee* of the *Insured* per day;
- (c) a total limit of Indemnity payable under this extension of GBP 10,000. Such limit of Indemnity being within the *Indemnity Limit* specified in the Schedule; and
- (d) the Certificate *Excess* not applying to this extension.

3.6 Mitigation Costs

Subject to notification in accordance with the Claims Conditions in Section 8, which are conditions precedent to the provision of indemnity, for costs reasonably incurred with *Our* prior written consent, which will not be unreasonably withheld, in respect of rectifying prior to any practical completion, take-over certificate or defects period any part of the works constructed by the *Insured* to the extent that the *Insured* is able to demonstrate on a balance of probabilities that the need for such rectification is due to the *Insured's* negligence in the conduct of the *Professional Business* by the *Insured* and is necessary to mitigate a *Claim* or a *Circumstance* likely to produce a *Claim* that would otherwise have been insured under Clause 2.1. Following rectification, if any *Claim* is still made against the *Insured* which would otherwise be covered by this Certificate *Our* maximum payment including any amount already paid shall not exceed the *Indemnity Limit* specified in the Schedule.

We shall only agree to pay such costs if *We* agree that they are less than the potential *Claim* and it was reasonable to pursue this course of action to rectify the problem that would otherwise have brought about a *Claim*. The burden of proof shall be upon the *Insured*.

3.7 Take Over and Mergers

In the event of a Take Over or Merger whereby there is a sale of the *Insured* or a merger with or acquisition by another entity such that the *Insured* is not the surviving entity and no longer:

- (a) controls the composition of the board of directors, or
- (b) controls more than half the voting power, or
- (c) holds more than half of the issued share capital

then this Certificate shall apply only to any *Claim* arising from the *Professional Business* of the *Insured* carried out prior to the date of such Take Over or Merger, unless otherwise agreed in writing by Us.

3.8 Acquisitions

If the *Insured* acquire another entity, We agree that this Certificate will provide cover for any *Claim* arising from the *Professional Business* of the *Insured* carried out within the acquired entity after the date of completion of the acquisition and once the *Insured* has taken full control of the entity subject to:

- (a) Cover only being provided for a maximum period of 30 continuous days starting on the date of acquisition and once the *Insured* has taken full control of the entity, but not for any period beyond the *Certificate Period*.
- (b) The turnover of the acquired entity being no greater than 15% of the *Insured's* turnover stated in the *Proposal*.
- (c) The entity taken over not being listed on any stock exchange or alternative investment market and not having outside shareholders.
- (d) The acquired practice being previously insured.

Section 4: Optional Extensions (Only if set out in the Schedule)

4.1 Previous Business

- (a) We agree to cover any principal, partner, member or director of the *Insured* named in the Schedule under the heading "Previous Business" for work they performed before joining the *Insured*.
- (b) This extension will only apply if the work performed was in the same profession as the *Professional Business* of the *Insured* and is not covered under any other insurance or the principal, partner, member or director does not have the benefit of cover under any other insurance.

4.2 United States of America

It is agreed that any *Claim* made or legal proceedings made within the United States of America and/or Canada and/or territories which come under the jurisdiction of the United states of America and/or Canada including the enforcement by courts of any other country of any judgement originally obtained in any court of the United states of America and/or Canada and/or territories which come under the jurisdiction of the United states of America and/or Canada shall be subject to the following terms:

- a) The maximum amount payable in respect of all *Claims* made under this Certificate shall not exceed in the aggregate the sum specified in the Schedule.
- b) Any *Costs* incurred during the investigation, defence and settlements shall be included with the sum specified in the Schedule and *Excess* as specified in the Schedule

This Certificate shall not apply to:

- a) Any punitive and/or exemplary damages awarded against the Assured.
- b) *Claims* based upon the Employment Retirement Income Security Act of 1974 and any amendment thereto, or any rules or regulation promulgated thereunder.
- c) *Claims* arising out of any actual or alleged violations of the Racketeer Influenced and Corrupt Organisations Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules and regulations promulgated thereunder.
- d) *Claims* arising out of actual or alleged violation of any of the provisions of the Securities Act 1933, the Securities Exchange Act 1934 or any similar Federal or State Law or any common law relating thereto.
- e) *Claims* arising out of seepage, pollution and/or contamination howsoever caused.

Section 5: Interpretation

In the Certificate:

- 5.1 (a) Person includes individuals, partnerships, bodies corporate and associations.
- (b) The headings are for descriptive purposes only.

- 5.2 Unless otherwise agreed, the construction and interpretation of this Certificate shall be determined in accordance with the laws of England and Wales.

- 5.3** In the event that any portion of the Certificate is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 5.4** All Certificate documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.
- 5.5** In this Certificate references to any statute shall be to that statute as amended or re-enacted from time to time.

Section 6: Definitions

In the Certificate:

- 6.1** *Certificate Period* means the period specified in the Schedule.
- 6.2** *Claim* means
- (i) Any written or oral demand for monetary damages or other relief including non pecuniary relief
 - (ii) Any civil, arbitration or adjudication proceedings including any counterclaim or appeal.
- 6.3** *Circumstance* means something that is likely to result in or give rise to a *Claim* against the *Insured*.
- 6.4** *Computer System* means any computer data processing equipment media or part thereof or system or data storage and retrieval or communication 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
- 6.5** *Computer Virus* means a piece of unauthorised executable code which propagates itself through the *Insured's Computer System*.
- 6.6** *Costs* means any reasonable fees, expenses, costs and disbursements incurred in investigating, adjusting or defending a *Claim* covered by this Certificate including any appeal issued in connection with a *Claim* and to which We have given *our* prior written consent. Any internal or overhead expenses of the *Insured* or the cost of any *Insured's* time is not included.
- 6.7** *Documents* means deeds, wills, agreements, maps, plans, books, letters, policies, Certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 6.8** *Employee* means any person employed by the *Insured* under a contract of service or apprenticeship during or prior to the commencement of the *Certificate Period*.
- 6.9** *Excess* means the amount specified in the Schedule.
- 6.10** *Indemnity Limit* means the amounts specified in the Schedule.
- 6.11** *Insured* means
- (a) The person, firm, partnership or company or other entity, specified as the *Insured* in the Schedule; and
 - (b) Any person who is or becomes, during the *Certificate Period*, a principal, partner, member or director of the *Insured* ; and
 - (c) Any former principals, partners, members or directors of the *Insured*; and
 - (d) In the event of the death or incompetence or bankruptcy of any principal, partner, member or director of the *Insured*, such person's estate, heirs, legal representatives or assigns, for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.
- 6.12** *IT Goods and Services* means software, hardware, firmware, other similar or related electronic equipment or cables. This shall also include any installation, distribution, writing, operation or maintenance of computer software, hardware, firmware or other similar or related electronic equipment or cables.
- 6.13** *Premium* means the amount set out in the Schedule
- 6.14** *Professional Business* means the *Professional Business* specified in the Schedule and as would be expected of a similar organisation to the *Insured* engaged in that profession.
- 6.15** *Proposal* means the written *Proposal* made by the *Insured* to *Us* together with any other related particulars and statements that have been supplied to *Us* in writing.
- 6.16** *Retroactive Date* means the date specified in the Schedule.

6.17 *Source Code Material* means the source code and object code of any software owned by the *Insured* or under the *Insured's* control and comprised within *IT Goods and Services*, together with any encryption keys, locks, or passwords, or any other documentation relating to such software, which is or may be required for the understanding, maintaining, modifying or correcting of the software.

6.18 *We/Us/Our* means the Insurers specified in the Schedule.

Section 7: Exclusions

We will not cover the *Insured* in respect of

7.1 Prior knowledge

- (a) Any *Claim* first made, threatened or intimated against the *Insured* prior to the *Certificate Period*;
- (b) Any *Claim* or loss arising out of any *Circumstance* which the *Insured* was aware of or ought reasonably to have been aware of prior to the *Certificate Period*;
- (c) Any *Claim*, *Circumstance* or other matter notified to any insurance policy proceeding the *Certificate Period*.

7.2 Fines and Penalties

Taxes, fines or penalties, punitive, aggravated, multiple, exemplary or other non-compensatory damages or the consequences of non-payment or any additional damages under Section 97(2) of the Copyright, Design and Patents Act 1988 or any statutory successor to that section or any *Claim* deemed uninsurable by law.

7.3 Liability to Employee's

Liability to *Employees* in respect of any *Claim* arising from any employment dispute including directly or indirectly based upon attributable to or in consequence of bodily injury, mental injury, sickness, disease or death or any breach of any obligations owed by the *Insured* as an employer for discrimination, harassment, unfair treatment or unfair dismissal or failure to promote any *Employee*.

7.4 Bodily Injury

Liability in respect of any *Claim* directly or indirectly based upon attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any person provided that this Exclusion shall not apply to *Claims* incurred as a result of breach of professional duty in the conduct of the *Professional Business*.

7.5 Property Damage

Liability incurred from the loss or destruction of, or damage to, any property unless arising from lost *Documents* or design or specification, technical information calculation or survey performed by or on behalf of the *Insured* in the conduct of *Professional Business*.

7.6 Assumed Duty or Obligation

Liability directly or indirectly arising out of, or in any way connected to any duty, obligation or liability incurred, entered into or assumed by the *Insured* which is not incurred, entered into or assumed in the normal conduct of the *Insured's Professional Business* or liability in respect of any *Claim* or loss arising directly or indirectly from, attributable to or in consequence of any duty or obligation assumed by the *Insured* pursuant to a contract to the extent that such contract imposes any greater obligation upon the *Insured* (which shall include, but not limited to, any restriction in a right of recovery of the *Insured*) than those referred to in Insuring Clause 2.1(i) (a), (b) or (c).

We will not indemnify the *Insured* for a contract other than a contract for *IT Goods and Services*.

Furthermore We will not indemnify any *Insured* for the part of any *Claim* where your right of recovery is restricted by any contract or agreement unless specifically agreed by *Us* in writing by endorsement to this Certificate.

7.7 Land, Buildings, Transport

Liability incurred or alleged to have been incurred, arising directly or indirectly from the ownership, possession or use by or on behalf of the *Insured* of any land, buildings, aircraft, vessel or mechanically propelled vehicle.

7.8 Contractual Terms

Any *Claim* arising out of any express agreement, warranty, indemnity, waiver or guarantee unless liability would have attached to the *Insured* in the absence of such express agreement, warranty, indemnity, waiver or guarantee;

7.9 War/Terrorism

Any *Claim* of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence to any *Claim* or *Costs*.

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Any act of terrorism.

For the purposes 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 of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

This exclusion also includes any liability for any *Claim* and/or *Costs* on account of any *Claim* of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

7.10 Nuclear

Any *Claim* arising from or attributable to:

- (a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- (b) Any legal liability of whatsoever nature

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

- (a) Ionising radiations 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.

7.11 Trading Debts

Any *Claim* arising from or directly or indirectly attributable to any trading debt or trading loss of the *Insured* or any guarantee or undertaking given by the *Insured* for a debt or performance of any other obligation by a third party.

7.12 Fraud and Dishonesty

- (a) Any *Claim* directly or indirectly arising from or attributable to any actual or alleged act or omission by the *Insured*, or its sub-consultants which was in reckless disregard, fraudulent, dishonest, malicious or criminal; or
- (b) Any liability arising directly or indirectly from or attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by the *Insured*, or its sub-consultants.

7.13 Associates

- (a) Any *Claim* by or on behalf of any *Insured*
- (b) Any *Claim* by or on behalf of any parent, subsidiary or associated company of the *Insured*;
- (c) Any *Claim* from any other company in which the *Insured* has a financial interest;
- (d) Any *Claim* from any other company in common control with the *Insured*

Unless such *Claim* emanates from an independent third party

7.14 Directors & Officers

Any breach by an *Insured* of a personal duty owed solely in the capacity of a member, director, secretary or officer of a body corporate.

7.15 Asbestos

Any *Claim* directly or indirectly arising from, relating to or involving asbestos in any form.

7.16 Insurance & Finance Matters

- (a) Any failure to obtain or maintain adequate insurance or finance.
- (b) Any Claim arising from the insolvency or other financial difficulties of the *Insured*.
- (c) Any lost profit, mark up or any VAT or similar Tax.

7.17 Date Recognition / Computer Viruses

- (a) Any failure of any *IT Goods and Services* to correctly recognise any date or to process any data or to operate properly due to any failure to recognise any date.

In addition We shall not indemnify the *Insured* in respect of any claim arising out of or in any way relating to, whether directly or indirectly, any correction, conversion, renovation, rewriting or replacement of or any failure to correct, convert, renovate, rewrite or replace any *IT Goods and Services* related to any failure to correctly recognise any date.

- (b) Any *Claim* arising from the transmission of a *Computer Virus*.

7.18 Products

Any Claim arising from the *Insured* or any sub-contractor, agent or consultant having supplied, manufactured, constructed, altered, repaired, treated, sold, recalled, fabricated, distributed, installed or maintained any goods or products; provided that this Exclusion shall not apply to the provision of any *IT Goods and Services* where any recommendations or specifications are in accordance with manufacturers intended design, specification or formula and arises from negligence or breach of professional duty by the *Insured* or by any *Employee* of the *Insured* in the conduct of the *Professional Business* by the *Insured*.

7.19 Pollution

Any *Claim* of whatsoever nature directly or indirectly arising out of or in any way involving actual or alleged seepage, pollution or contamination of any kind.

7.20 Toxic Mould

Any *Claim* of whatsoever nature directly or indirectly arising out of or in any way involving the presence of or any form of release of *aspergillus fumigatus*.

7.21 Partnership Duties

Any actual or alleged breach of the *Insured's* partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *Insured* is a limited liability partnership or a company without share capital.

7.22 Other Insurance

Any *Claim* other than in excess of any other valid insurance, with the sole exception of any Certificate written as specific excess insurance over the *Indemnity Limit* provided by this Certificate.

7.23 Investment, Money and Securities

Any Claim arising from;

- (i) the provision of advice on any financial matters;
- (ii) the arrangement of any finance or credit;
- (iii) the investment, sale, purchase or dealing in any stock, share or security;
- (iv) the breach of any legislation or regulation relating to (i), (ii) and (iii) above;
- (v) loss, damage or destruction of any money, negotiable instruments, bonds, coupons, currency, bank notes or stamps.

7.24 Non Competitive Behaviour and Taxation

Any *Claim* directly or indirectly arising from or attributable to breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.

7.25 Pension/Trust Liability

Any breach by an *Insured* of a duty owed arising from the operation or administration of any trust fund, pension or other employee benefit scheme.

7.26 Known or Inherent Defects

Any *Claim* directly or indirectly arising from or attributable to the provision of *IT Goods and Services* by the *Insured* or any product known by the *Insured* or ought reasonably to have been known to the *Insured* to be deficient, ineffective or incapable of fulfilling or substantially fulfilling the purpose for which it is intended or to perform as specified, warranted (Whether express or implied) or guaranteed.

7.27 Inappropriate Material

Any *Claim* directly or indirectly arising from or attributable to obscenity, blasphemy, pornographic material or the transmission of any other inappropriate material or e-mail.

7.28 Product Recall

Any *Claim* directly or indirectly arising from or attributable to the withdrawal, inspection, repair, modification, replacement or loss of use of any *IT Goods and Services* where such withdrawal, inspection, repair, modification, replacement or loss of use are due to a known or suspected defect or deficiency which requires a withdrawal from the market.

7.29 Retroactive Date

Any *Claims* arising out of the exercise and conduct of the *Professional Business* carried out prior to any *Retroactive Date* specified in the Schedule.

Section 8: Claim Conditions Precedent to Liability

Observance and compliance with the terms of the conditions in this Section of the Certificate is a condition precedent to *Our* liability to provide Indemnity, cover and payment under this Certificate.

8.1 Notification

The *Insured* shall notify *Us* in writing within the *Certificate Period* and as soon as practicable of any:

- (a) *Claim* made against any *Insured*;
- (b) *Circumstance* likely to produce a *Claim* against the *Insured* whether or not the *Insured* believes the claim to have any merit or to be valid;
- (c) notice of any intention to make a *Claim* against the *Insured*;
- (d) discovery or reasonable cause for suspicion of dishonesty or fraud on the part of any former or present principal, partner, member, director, employee, or sub-consultant of the *Insured* whether giving rise to a loss or *Claim* hereunder or not.

Any subsequent *Claim* arising out of matters notified under Clause 8.1(b) and 8.1(c) shall in each case be deemed to have been a *Claim* made during the *Certificate Period*.

Notification is deemed to have been made only when received in writing by the nominee named in the Schedule.

The notification must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against the *Insured*, identification of the project and services giving rise to the *Claim* or potential claim, the potential quantum if known involved in the *Claim* and in the case of a *Circumstance*, the notification should include the reasons for the belief that a *Claim* is likely to be made.

8.2 Co-operation

- (a) As soon as practicable following receipt thereof by the *Insured*, they must deliver to *Us* any Letter of Claim, Pre-Action Protocol Letter, Claim Form, other legal procedural documents, Summons, Arbitration Notice or other such similar correspondence and documents to those described.
- (b) The *Insured* shall provide *Us* with all information and assistance that *We* and/or the representatives and other appointed by *Us* may reasonably require.
- (c) The *Insured* shall use due diligence and shall ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a *Claim* or loss.

Compliance with this condition will be at the *Insured's* own cost.

8.3 Legal Defence and Settlement

- (a) We are entitled but not obliged to assume the legal defence of any *Claim* covered under this Certificate in the name of the *Insured* and We shall have full discretion in managing any negotiation or proceedings as to the resolution of such *Claim*.
- (b) We shall be entitled to select and appoint the lawyers that will defend and represent the *Insured* in respect of any *Claim*.
- (c) Subject to Section 9.1 below, We shall be entitled to settle a *Claim* if We so choose.
- (d) The *Insured* agrees not to admit liability for or settle any *Claim*, make any admission, offer payment or assume any obligation in connection with any *Claim*, or incur any *Costs* in connection with any *Claim*, without *our* written consent.
- (e) We shall not be liable for any settlement, *Costs*, admission, offer, payment or assumed obligation without *our* written consent.
- (f) If We are of the opinion that a *Claim* will not exceed the *Excess*, We may require the *Insured* to conduct the defence of the *Claim* at their own expense.
- (g) We may at any time pay to the *Insured* the *Limit of Indemnity* (having deducted any sums already paid) or any lesser amount for which such *Claim* may be settled and having paid such sum We shall relinquish the control of such *Claim* and be under no further liability in connection with such *Claim* except for costs and expenses for which We may be responsible under this Certificate for matters arising prior to the date of such payment.

8.4 Dishonest or Fraudulent persons

Should the *Insured* suffer any loss or *Claim* or incur any liability of the type insured under the Certificate by reason of the dishonest or fraudulent act or omission of any former or present principal, partner, member, director or *Employee* of the *Insured*:

- (a) the *Insured* shall at *Our* request take all reasonable steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the *Insured* or any monies of such persons held by the *Insured* shall be deducted from any amount payable hereunder;
- (c) notwithstanding general condition 9.17 no indemnity in respect of such loss or *Claim* shall be afforded hereunder to any person committing or condoning such dishonest or fraudulent act or omission;
- (d) nothing herein shall preclude *Us* from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (e) the sums payable hereunder shall be only for the balance of liability in excess of the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives.
- (f) The *Insured* shall bear the burden of providing satisfactory proof to substantiate a loss hereunder (including any costs incurred in such process and We will be under no obligation to provide indemnity to the *Insured* until such time as We are satisfied that such loss has in fact been sustained;
- (g) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the *Insured* concerned;

Section 9: General Conditions

9.1 *Insured's* Right to Contest

In the event that We recommend settlement of a *Claim* and the *Insured* does not agree to the settlement of the *Claim*, and the *Insured* decides to contest the *Claim*, *our* liability shall not exceed the amount for which the *Claim* could have been settled, or *Costs* incurred up to the date upon which the *Claim* could have been settled.

9.2 Senior Counsel

- (a) We shall not require the *Insured* to contest a *Claim* unless a Senior Counsel (agreed upon by the *Insured* and *Us* or failing such agreement to be nominated by the Chairman for the time being of the Bar Council of England and Wales or where appropriate by a similar official of any similar body in any other applicable jurisdiction) advises that the *Claim* should be contested taking into account all likely *Costs*, prospects of success and the damages and costs likely to be recovered by the third party claimant.

- (b) The cost of Senior Counsel's advice shall be regarded as part of the *Costs*.

9.3 Subrogation

- (a) Where We have paid a *Claim* under this Certificate We become entitled to any rights the *Insured* has against any party in relation to the *Claim* to the extent of *our* payment.
- (b) The *Insured* must assist *Us* and provide information as We may reasonably require to exercise *our* rights of subrogation, including bringing any action or suit in the *Insured's* name. This may include providing and signing statements and other documents and the giving of evidence.
- (c) Any recovery received shall be applied first against any *Claim* or *Costs* insofar as it exceeds the *Indemnity Limit*, then against any payment made by *Us*, and finally against the *Excess*
- (d) We will not subrogate against any principal, partner, director or *Employee* or former *Employee* of the *Insured* under this Certificate unless that person is found to have committed a criminal, fraudulent, malicious or dishonest act or omission.

9.4 Alteration to Risk

The *Insured* must notify *Us* in writing as soon as practicable of any material alteration to the risk during the *Certificate Period* including but not limited to any material change in the nature of or cessation of the *Professional Business*.

We may not cover the *Insured* for any *Claim* if the *Insured* does not notify *Us* in writing as soon as practicable of any material alteration to risk.

9.5 Assignment

The *Insured* must not assign this Certificate or any rights under this Certificate without *our* prior written consent by way of endorsement to this Certificate.

9.6 Jurisdictional Limitation

The cover provided by this Certificate shall be limited to a *Claim* brought anywhere in the Jurisdiction shown in the Schedule arising from breach of professional duty by the *Insured* in the conduct of the *Professional Business* by the *Insured*.

9.7 Geographical Limitation

The cover provided by this Certificate shall be limited to any *Claim* resulting from work carried out in the Geographical limits shown in the Schedule arising from breach of professional duty by the *Insured* in the conduct of the *Professional Business* by the *Insured*.

9.8 Several Liability of Insurers

The obligations of the subscribing Insurers where there is more than one Insurer named in the Schedule subscribing to this Certificate are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing 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.

9.9 Authorisation

The *Insured* named in the Schedule shall act on behalf of all *Insured's* with respect to the giving and receiving of notice under this Certificate, including the giving of notice of any *Claim*, the payment of the premium, the receipt and acceptance of any endorsements attaching to and forming part of this Certificate.

9.10 Fraudulent Claims

If the *Insured* shall knowingly make any false or fraudulent request in respect of any *Claim*, as regards amount or otherwise, this Certificate shall become void and all entitlements to payment in respect of any *Claim* shall be forfeited.

9.11 Our Rights

In the event that We are entitled to avoid or repudiate this Certificate ab initio, We may instead at *Our* election give notice in writing to the *Insured* that We regard this Certificate as of full force and effect save that there shall be excluded from any insurance afforded hereunder any *Claim* which has arisen or which may arise and which is related to the circumstances which entitle *Us* to avoid or repudiate this Certificate. This Certificate shall then continue in full force and effect but shall be deemed to exclude the particular *Claim* referred to in said notice as if this had been specifically endorsed ab initio.

9.12 Third Party Rights

No party who is not an *Insured* shall be entitled to enforce any term of this Certificate for its own benefit under the Contracts (Rights Against Third Parties) Act 1999 or otherwise.

9.13 Waiver or Amendment

The terms of this Certificate shall not be waived or amended except by endorsement issued by *Us* or intended to be issued by *Us* to form part of this Certificate.

9.14 Confidentiality

The *Insured* shall not disclose the terms of this Certificate or the amount of the premium paid to any third party:

- (a) except to the extent that the *Insured* is required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or
- (b) except that the existence of the Certificate and the limits of indemnity available thereunder may be disclosed to an insurer, to a client or a prospective client, wholesale broker or placing agent where this is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where the *Insured* is aware or ought reasonably to be aware that the person to whom disclosure is going to be made has made or is likely to make a claim against the *Insured*; or
- (c) except to the extent that *We* consent, in writing, to such disclosure.

9.15 Source Code Material and Protection

The *Insured* must maintain a current and accurate copy of the *Source Code Material* and, if required by *Us*, make this available to assist in the mitigation or determination of any *Claim*. Furthermore, the *Insured* must take all reasonable steps to maintain and upgrade software which protects against any unauthorised use or access to the *Insured's* computer systems or website and to take regular back up copies of any data, file or program.

9.16 Data Protection

We follow strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. We record and hold data in accordance with the Data Protection Act 1998. We may pass data to other firms or businesses that supply products or services associated with this Certificate.

9.17 Document Management

We may hold the *Proposal* (including any attachments thereto) and any documents relating to this Certificate and any *Claim* in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

9.18 Indemnity to Employees

If the *Insured* requires, We will indemnify any *Employee* of the *Insured* in like manner to the *Insured* provided the *Employee* as though they were the *Insured* observes and complies and is subject to the terms of this Certificate and Schedule.

Section 10: Limit of Liability

10.1 Indemnity Limit

Our total liability under this Certificate for any one *Claim* shall not exceed the *Indemnity Limit* specified in the Schedule. For the purposes of the *Indemnity Limit* the following are regarded as one *Claim*:

- (i) any *Claims* arising out of or in connection with the same originating cause or source;
- (ii) any loss or losses for which indemnity is available arising out of or in connection with the same originating cause or source;
- (iii) any *Claims*, loss or losses directly or indirectly arising from fraud or dishonesty;
- (iv) any costs for which indemnity is available under clause 3.6;

Our liability for *Costs* is either within the *Indemnity Limit* or in addition thereto as described in the Schedule.

10.2 Excess

A separate *Excess* shall apply in respect of each and every *Claim*. The *Insured* is responsible for each such *Excess* payment of which is a condition precedent to *Our* liability under this Certificate. We are only liable to indemnify the *Insured* for that

part of the *Insured's* liability for each *Claim* that is greater than the *Excess* where We have paid on the *Insured's* behalf part or all of the *Excess/es* the *Insured* shall reimburse Us.

The Schedule states whether the *Excess* applies to *Costs*.

Section 11: Disputes Clause

Disputes arising from or in connection with this Certificate shall be subject to the jurisdiction of the Courts of England and Wales.

Disputes arising from or in connection with this Certificate may be referred by the *Insured* to a recognised mediation service.

Any disputes arising from or in connection with this Certificate shall be governed by the laws of England and Wales.

Our Regulatory Status

This insurance is underwritten by DUAL Corporate Risks Limited (Company No. 4160680) on behalf of Arch Insurance Company (Europe) Limited (Company No. 4977362). Both DUAL Corporate Risks Limited and Arch Insurance Company (Europe) Limited are authorised and regulated by the Financial Services Authority. Our Firm Registration Numbers at the FSA are 312593 and 229887 respectively. These details may be checked by visiting the Financial Services Authority website at www.fsa.gov.uk/register. Alternatively the Financial Services Authority may be contacted on 0845 606 1234.

Arch Insurance Company (Europe) Limited is a member of the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if it is unable to meet its liabilities under this insurance certificate. This depends upon the type of business and the circumstances of the claim. Further Information about the compensation scheme arrangements is available from the FSCS or by visiting the FSCS website at www.fscs.org.uk.

How to Complain

We intend to provide an excellent service to you, however, we recognise that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive, please contact either your insurance broker or

The Managing Director
DUAL Corporate Risks Limited
140 Leadenhall Street
London
EC3V 4QT

Please state the nature of your complaint, the certificate and/or claim number.

If after taking this action you are still unhappy with our response please write to:

Chief Executive Officer
Arch Insurance Company (Europe) Limited
6th Floor
Plantation Place South
60 Great Tower Street
London
EC3R 5AZ

Having taken this action, if you feel that your complaint has not been handled satisfactorily, you may seek assistance from The Financial Ombudsman Service
South Quay Plaza, 183 Marsh Wall London E14 9SR
Telephone – 0845 080 1800
Email – enquiries@financial-ombudsman.org.uk
Website – www.financial-ombudsman.org.uk

The Financial Ombudsman Service will become involved if you are an eligible complainant as defined by the rules of the Financial Services Authority.

The existence of this complaints procedure does not affect any right of legal action you may have against DUAL Corporate Risks Limited or Arch Insurance Company (Europe) Limited.