

# DUAL EVOLUTION (Specialist)

## THIS IS A CLAIMS MADE CERTIFICATE

### Section 1: Basis of insurance

In consideration of the payment of the *premium* specified in the schedule, *We* shall provide cover on the terms set out below.

### Section 2: Insuring Clauses

*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 the terms of this Certificate in respect of any legal liability arising out of:

- 2.1 a breach of professional duty by the *Insured* or by any *Employee* of the *Insured* in the course of the *Insured's Professional Business*.
- 2.2 any dishonest or fraudulent act or omission on the part of any *Employee* provided that:
  - 2.2.1 no person committing or condoning such dishonest or fraudulent act or omission shall be entitled to an indemnity;
  - 2.2.2 no indemnity shall be provided for dishonest or fraudulent acts committed by any person or after discovery by the *Insured* of any reasonable cause for suspicion of fraud or dishonesty on the part of that person;
  - 2.2.3 in relation to this clause 2.2 and 7.4, *Employee* shall not include sub-consultants.
- 2.3 the *Insured's* involvement in a joint venture provided the extent of the indemnity is restricted to *Claims* arising out of work performed by the *Insured* or an *Employee* in the course of the *Insured's Professional Business*.
- 2.4 libel and slander committed without intention or malice by the *Insured* or any *Employee* during the course of the *Insured's Professional Business*.

*We* also agree to pay *Costs* either incurred by *Us* or incurred by the *Insured* provided *Our* prior written consent has been given.

### Section 3: Extensions to Cover

#### 3.1 Compensation for Court Attendance

*We* agree to indemnify the costs of attendance at a court formal hearing or mediation by an *Employee* in connection with a *Claim* or a *Circumstance* notified to *Us* where such attendance is approved by *Us*. This cover is subject to *Our* having given prior written agreement to the attendance and to the upper limit recoverable being restricted to GBP 250 per day and to a total limit of indemnity under this clause being limited to GBP 10,000. The Certificate *Excess* does not apply to this clause.

#### 3.2 Loss of Documents

*We* agree to indemnify the *Insured* for expenses reasonably incurred in replacing or restoring *Documents* which are discovered lost or damaged beyond reasonable use and for which the *Insured* is legally responsible in the course of its *Professional Business*, provided that the loss of *Documents* is first discovered during the *Certificate Period*. For the purpose of this clause only, the excess payable by the *Insured* is GBP 1,000 and the limit of indemnity shall be limited to GBP 100,000 in the aggregate during the *Certificate Period*.

#### 3.3 Acquisitions

If the *Insured* acquires 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:

- 3.3.1 the turnover or fees of the acquired entity being no greater than 10% of the *Insured's* turnover or fees stated in the *Proposal*.
- 3.3.2 the acquired entity not being listed on any stock exchange or alternative investment market and not having outside shareholders and also not being domiciled in a different territory from that of the *Insured*.
- 3.3.3 the acquired entity being previously and continuously insured for professional indemnity cover on similar terms to this Certificate
- 3.3.4 the acquired entity undertaking a very similar *Professional Business* to that of the *Insured*.

#### 3.4 Take Overs 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:

- 3.4.1 controls the composition of the board of directors, or
- 3.4.2 controls more than half the voting power, or
- 3.4.3 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*.

#### Section 4: Interpretation

In the Certificate:

- 4.1 4.1.1 person includes individuals, partnerships, bodies corporate and associations
- 4.1 4.1.2 the headings are for descriptive purposes only
- 4.2 unless otherwise agreed, the construction and interpretation of this Certificate shall be determined in accordance with the law of England and Wales.
- 4.3 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.
- 4.4 the *Proposal*, the schedule and the Certificate 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.
- 4.5 in this Certificate references to any statute shall be to that statute as amended or re-enacted from time to time.
- 4.6 GBP shall mean British Pounds or its currency equivalent.
- 4.7 Any reference to the singular shall include the plural and vice versa.

#### Section 5: Definitions

In the Certificate

- 5.1 *Certificate Period* means the period specified in the schedule.
- 5.2 *Claim* means
  - 5.2.1 any written or oral demand for monetary damages or other relief including non pecuniary relief.
  - 5.2.2 any civil, arbitration or adjudication proceedings including any counterclaim or appeal.
- 5.3 *Circumstance* is understood to include the following:
  - 5.3.1 an intimation of an intention to claim against the *Insured*
  - 5.3.2 any known direct or indirect criticism or dispute whether expressed or implied relating to performance of the *Insured* (whether justified or not)
  - 5.3.3 any known direct or indirect criticism or dispute whether expressed or implied relating to performance (whether justified or not) of a party for whom and for which the *Insured* is responsible
  - 5.3.4 any awareness of the *Insured* of a failing or real doubt of the efficacy of their own performance or of the performance of a part for whom and for which the *Insured* is responsible
  - 5.3.5 any awareness of the *Insured*, that materials, goods, services or actions or actions specified, designed or recommended by the *Insured* or by a party for whom and for which the *Insured* is responsible have failed to meet the standard requiredwhich is likely to give rise to a *Claim* under this Certificate.
- 5.4 *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* (except where covered under clause 3.1) or the costs of any *Insured's* time is not included.
- 5.5 *Documents* means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or produced by any method including computer records and electronically stored data used in the course of the *Insured's Professional Business* but does not mean bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 5.6 *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*, as well as any sub-consultant acting on behalf of the *Insured* under a written agreement and for whom the *Insured* is responsible, but subject always to *Our* right to subrogation. No-one who is or becomes during the *Certificate Period* a principal, partner, member or director of the *Insured* shall be an *Employee*.
- 5.7 *Excess* means the amount specified in the schedule.
- 5.8 *Indemnity Limit* means the amount specified in the schedule.
- 5.9 *Insured* means
  - 5.9.1 the person, firm, partnership or company or other entity, specified as the *Insured* in the schedule; and
  - 5.9.2 any person who is or becomes, during the *Certificate Period*, a principal, partner, member or director of the *Insured*; and

- 5.9.3 any former principals, partners, members or directors of the *Insured*; and
- 5.9.4 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.
- 5.10 *Premium* means the amount set out in the schedule.
- 5.11 *Professional Business* means the *Professional Business* specified in the schedule and as advised to *Us* in the *Proposal*.
- 5.12 *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.
- 5.13 *Retroactive Date* means the date specified in the schedule.
- 5.14 *We/Us/Our* means the Insurers specified in the Insurer Details.

## Section 6: Exclusions

We will not cover the *Insured* for:

### 6.1 Asbestos and Toxic Mould

a *Claim* directly or indirectly arising from, relating to or involving:

- 6.1.1 asbestos, or any materials containing asbestos, in any form or quantity; or
- 6.1.2 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.

### 6.2 Associates

- 6.2.1 a *Claim* by or on behalf of the *Insured*;
- 6.2.2 a *Claim* by or on behalf of any parent, subsidiary or associated company of the *Insured*;
- 6.2.3 a *Claim* from any other company in which the *Insured* has a majority shareholding in excess of 50%;
- 6.2.4 a *Claim* from any other company in common control with the *Insured*;

unless such *Claim* emanates from an independent third party

### 6.3 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*.

### 6.4 Computer Network and Data Corruption

a *Claim* arising directly or indirectly from:

- 6.4.1 the corruption, erasure, theft, alteration of, or
- 6.4.2 the access or lack of access to, or
- 6.4.3 the interference with

electronically held data of or by the *Insured* wholly or partly caused by any computer virus by any person who is not a partner, director, member or *Employee* of the *Insured*.

### 6.5 Computer Records

a *Claim* out of the loss, distortion or erasure of computer records:

- 6.5.1 whilst mounted in or on any machine for use or processing unless caused by negligent act or omission on the part of the *Insured* or
- 6.5.2 resulting from wear, tear, vermin or gradual deterioration or
- 6.5.3 caused by climatic or atmospheric conditions or extremes of temperature or
- 6.5.4 due to the presence of magnetic flux or due to loss of magnetism.

### 6.6 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.

### 6.7 Financial

any *Claim* arising from, attributable to, relating to or in any way involving:

- 6.7.1 depreciation or loss of investments when the depreciation or loss is as a result of any fluctuation in any financial, stock or commodity markets when such fluctuation is outside the influence or control of the *Insured*;

**6.7.2** any failure to obtain or maintain adequate insurance

**6.7.3** the insolvency, bankruptcy or liquidation of the *Insured*

**6.8** Fines and penalties

finer, penalties, punitive or exemplary damages.

**6.9** 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 motor powered or mechanically propelled vehicle.

**6.10** Liability to Employees

liability to *Employees* in respect of any *Claim* arising from any contract of service or obligation owed by the *Insured* as employer and/or arising from any bodily injury, sickness, disease or death sustained in the course of their employment by the *Insured*.

**6.11** Nuclear

a *Claim* arising from or attributable to:

**6.11.1** ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

**6.11.2** the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**6.12** Other insurance

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

**6.13** 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.

**6.14** Prior knowledge

**6.14.1** a *Claim* or *Circumstance* known to the *Insured* or which in the reasonable opinion of the *Insurer* ought to have been known prior to the *Certificate Period*;

**6.14.2** a *Claim* or *Circumstance* notified to any insurance policy preceding the *Certificate Period*.

**6.15** Products

a *Claim* arising out of the manufacture, construction, installation, alteration, repair, workmanship, servicing or treating of any goods or products sold, supplied or distributed by or on behalf of the *Insured* even though the same might be carried on by the *Insured* in conjunction with their *Professional Business*.

**6.16** Property Damage

liability arising out of 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*.

**6.17** Retroactive Date

any *Claim* arising out of the exercise and conduct of the *Professional Business* carried out prior to any *Retroactive Date* specified in the schedule.

**6.18** Trading Debts

a *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.

**6.19** 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*.

**6.19.1** 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

**6.19.2** any act of terrorism, 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.

**Section 7: Conditions Precedent to Liability**

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

Clauses 7.1, 7.2, 7.3 and 7.4 are **conditions precedent**. No *Claim* will be paid unless full and complete adherence to these conditions is maintained by the *Insured*.

## 7.1 Notification

The *Insured* shall notify *Us* in writing within the *Certificate Period* and **within 28 days** of any

**7.1.1** *Claim* made against any *Insured*

**7.1.2** *Circumstance* against the *Insured* regardless of whether the *Insured* believes the *Claim* to have any merit;

**7.1.3** discovery or reasonable cause for suspicion of dishonesty or fraud on the part of any *Employee*.

Any subsequent *Claim* arising out of matters notified under Clause 7.1.2 or 7.1.3 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 shown in the Details for Notification of Claims.

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.

As a **condition precedent** to *Our* liability to provide an indemnity, where **court proceedings are served** against the *Insured* the *Insured* shall notify *Us* **within 7 days**.

## 7.2 Co-operation

**7.2.1** 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.

**7.2.2** The *Insured* shall provide *Us* with all information and assistance that *We* and/or *Our* representatives and other appointed by *Us* may reasonably require.

**7.2.3** 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 a *Claim* or loss.

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

## 7.3 Legal Defence and Settlement

**7.3.1** *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*.

**7.3.2** *We* shall be entitled to select and appoint the lawyers that will defend and represent the *Insured* in respect of any *Claim*.

**7.3.3** 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.

**7.3.4** 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.

**7.3.5** *We* may at any time pay to the *Insured* the *Indemnity Limit* (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.

## 7.4 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 *Employee* (excluding sub-consultants):

**7.4.1** the *Insured* shall at *Our* request take all reasonable steps to obtain reimbursement from such person;

**7.4.2** 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;

**7.4.3** 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;

**7.4.4** nothing herein shall preclude *Us* from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;

**7.4.5** 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;

**7.4.6** 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;

## Section 8: General Conditions

### 8.1 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.

### 8.2 Senior Counsel

**8.2.1** *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 the costs likely to be recovered by the third party claimant.

**8.2.2** The cost of Senior Counsel's advice shall be regarded as part of the *Costs*.

### 8.3 Subrogation

**8.3.1** 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.

**8.3.2** 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.

**8.3.3** 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*.

**8.3.4** *We* will not subrogate against any *Employee* unless that person is found to have committed a criminal, fraudulent, malicious or dishonest act or omission.

### 8.4 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 the risk.

### 8.5 Jurisdictional and Geographical Limitation

*We* shall indemnify *Claims* arising from the conduct of the *Professional Business* by the *Insured* provided only they are brought within the Jurisdictional Limits or arise out of work undertaken within the Geographical Limits allowed for in the schedule to this Certificate.

### 8.6 Authorisation

The *Insured* named in the schedule shall act on behalf of all those entitled to an indemnity under this Certificate 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.

### 8.7 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.

### 8.8 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.

### 8.9 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.

## Section 9: Dispute Clause

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 the country stated alongside the heading "*Law and Jurisdiction*" in the schedule.