

IT Professionals Liability Insurance

Wording Document

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IT Professionals Liability Insurance

Important Information

Please read the following information

A. Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim, or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

B. Claims Made and Notified Policy

This policy provides Professional Indemnity Insurance on a "Claims Made and Notified" basis. This means that the policy covers you for claims made against you and notified to the insurer during the period of cover. It does not provide cover for:

- claims arising from an event which occurred before the policy's "retroactive date" where such a date is specified in the schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the period of cover);
- claims made, threatened or intimated before the period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy;
- claims arising from circumstances noted on the proposal form or any previous proposal form.

C. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

D. Average Provision

Section 4 of the policy provides that if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Berkley Insurance Australia's liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim.

E. Privacy

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

Disclosure of Information that you provide to us

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

Cross Border

We will share Your personal information with the Berkley group of companies. Our data containing Your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on our website www.berkleyinaus.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to australiacclaims@berkleyinaus.com.au

Contact Details

Berkley Insurance Australia
Level 23, 31 Market Street
SYDNEY NSW 2000
Ph: 02 9275 8500
Fax: 02 9261 2773
Email: australia@berkleyinaus.com.au
Web site: www.berkleyinaus.com.au

IT Professionals Liability Insurance

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Contact Details

Sydney	Melbourne	Brisbane	Perth	Adelaide
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Email: australia@berkleyinaus.com.au		Web site: www.berkleyinaus.com.au		

IT Professionals Liability Insurance

This is a claims made and notified insurance policy.

1. Preamble

The INSURED having submitted a PROPOSAL which shall be agreed to be the basis of this insurance and in consideration of the INSURED having agreed to pay the premium shown in the SCHEDULE, WE agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this POLICY.

2. Professional Indemnity

This is a claims made and notified section of the policy.

2.1 Insuring Clause

WE shall indemnify the INSURED, up to the LIMIT OF INDEMNITY, for the amount of any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD, in respect of any civil liability to pay COMPENSATION which arises out of a breach of professional duty in the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the course of the INSURED'S BUSINESS.

2.2 Automatic Extensions

The following extensions are granted as part of the cover provided by Section 2.1 but are subject to the terms, conditions, exclusions and limitations of this POLICY.

2.2.1 Breach of Contract

The INSURED is indemnified, in accordance with Section 2.1 for any CLAIM, first made against the INSURED and notified to US during the POLICY PERIOD, in respect of CONTRACTUAL LIABILITY based upon or arising from breach of the INSURED'S professional duty in the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the course of the INSURED'S BUSINESS.

2.2.2 Trade Practices Act and other Legislation

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which arises out of conduct done in contravention of the Trade Practices Act

1974, or any State or Territory Fair Trading Act but only where such conduct:

- a) constitutes a contravention of such statute because it:
 - i) is misleading or deceptive or likely to mislead or deceive;
 - ii) is the making of a false or misleading representation;
 - iii) is unconscionable; or
 - iv) is in breach of a warranty implied into a contract for the provision of services by any of the above Acts;AND
- b) is not intentional; AND
- c) arises from or as a consequence of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the course of the INSURED's BUSINESS.

2.2.3 Loss of or Damage to Documents

In the event of physical loss of or damage to DOCUMENTS suffered and notified to US during the POLICY PERIOD, the INSURED is indemnified for any CLAIM or reasonable and necessary costs and expenses incurred (although not the INSURED's own time) in replacing, restoring or reconstituting any DOCUMENTS which are the property of the INSURED or are in the INSURED's care, custody or control.

2.2.4 Dishonesty of Employees

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which arises out of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the conduct of the INSURED's BUSINESS brought about, or contributed to, by the dishonest, fraudulent, criminal or malicious act or omission of any person at any time employed by the INSURED provided that:

- a) there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on behalf of the person concerned;
- b) there is no indemnity for any loss of money, negotiable instruments, bearer

bonds or coupons, stamps, bank or currency notes;

- c) there is no indemnity in respect of such loss or CLAIM shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- d) the INSURED shall, at OUR request and expense take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- e) any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance;
- f) the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent criminal or malicious act or omission or their estates or legal personal representatives;
- g) the person who committed the dishonest, fraudulent, criminal or malicious act or omission was not a principal, partner or director of the INSURED;
- h) nothing herein shall preclude US from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

2.2.5 Indemnity to Present or Former Principals, Employees and Others

Present and former partners, principals, directors, consultants and employees of the INSURED are indemnified, in accordance with Section 2.1 and the various extensions to Section 2 of the POLICY, for any CLAIM first made against them and notified to US during the POLICY PERIOD which arises out of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the exercise and conduct of the INSURED's BUSINESS.

2.2.6 Defamation, Libel and Slander

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made

against the INSURED and notified to US during the POLICY PERIOD in direct consequence of any defamation, libel or slander by the INSURED which arises out of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the exercise and conduct of the INSURED's BUSINESS. For the purposes of this extension, the term COMPENSATION shall include any civil liability to pay punitive or exemplary damages.

2.2.7 Infringement of Intellectual Property Rights

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which the INSURED may become legally liable to pay as a result of an inadvertent infringement or alleged infringement of another party's INTELLECTUAL PROPERTY RIGHTS which arises out of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the course of the INSURED's BUSINESS.

2.2.8 Joint Venture/Consortium

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which the INSURED may become legally liable to pay, whether jointly or severally, and which arises out of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES in the exercise and conduct of the INSURED's BUSINESS in their capacity as a member of a joint venture or consortium where such joint venture or consortium, together with the turnover/fees of the joint venture or consortium (not just the INSURED's proportion), has been declared to US, whether or not the joint venture or consortium is conducted through a separate legal entity.

2.2.9 Contractors

The INSURED is indemnified, in accordance with Section 2.1, for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which the INSURED may become legally liable to pay arising out of the conduct of any CONTRACTOR, but only to the extent that such conduct by the CONTRACTOR was

in the course of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES on behalf of the INSURED.

No indemnity is provided to the CONTRACTOR unless Optional Extension 2.3.2 is purchased.

2.2.10 Severability

WE agree that where this POLICY insures more than one INSURED, any conduct on the part of any person who is employed by or is a director or partner of another INSURED, whereby such person:

- a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- b) made a misrepresentation to US before this contract of insurance was entered into, shall not prejudice the right of any other INSURED to indemnity as may be provided by this POLICY.

Provided always that:

- i) such other INSURED, its directors or employees shall be entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard shall be upon the INSURED;
- ii) such other INSURED shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise US in writing of all known facts in relation to such conduct; and
- iii) enquiry has been made, before the contract of insurance was entered into with US, of each INSURED and persons who make up the INSURED for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit the INSURED'S duty of disclosure owed by the entities or persons that make up the INSURED.

2.2.11 Newly Created or Acquired Subsidiaries

WE agree to provide coverage, in accordance with insuring clause 2.1 and the various extensions to Section 2 of the POLICY, to any entity or subsidiary acquired or created by the INSURED during the POLICY PERIOD for a period of up to fourteen (14) days (but never beyond the expiry date of the POLICY PERIOD) from the date of such acquisition or creation.

WE may, at OUR discretion, agree to provide further coverage beyond a period of fourteen (14) days (but never beyond the expiry date of the POLICY PERIOD) where:

- a) the INSURED has notified US of the acquisition or creation of the entity or subsidiary and has provided all information requested by US; and
- b) any terms imposed by US including the charging of any additional premium considered appropriate, have been agreed by the INSURED.

Provided always that any coverage provided under this extension will only apply in respect of civil liability arising out of any act, error or omission occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by US.

2.2.12 Run-Off Cover

WE agree that in the event that an INSURED entity or subsidiary ceases to exist or operate or is consolidated with, merged into or acquired by any other entity, then the coverage provided by this POLICY, with respect to such INSURED entity or subsidiary, shall continue until the expiry date of the POLICY PERIOD.

Provided always that such coverage shall only apply in respect of civil liability arising out of any act, error or omission occurring prior to the effective date that such INSURED entity or subsidiary ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by US.

2.3 Optional Extensions

In respect of each extension if it is stated in the SCHEDULE as covered then in addition to the cover provided under Section 2.1 each of the following extensions will apply:

2.3.1 Reinstatement of the Limit of Indemnity

WE agree to reinstate the LIMIT OF INDEMNITY by the extent to which it becomes eroded or exhausted by any CLAIM to which this POLICY applies, provided always that

- a) such reinstatement shall only apply in excess of the limits provided to the INSURED under any other insurance operating in excess of this POLICY;
- b) the maximum amount payable under this POLICY in respect of
 - i) any one CLAIM shall not exceed the LIMIT OF INDEMNITY;

- ii) the aggregate amount of all CLAIMS during the POLICY PERIOD shall not exceed twice the LIMIT OF INDEMNITY.

2.3.2 Contractors of the Insured

WE agree to indemnify, in accordance with Section 2.1, and, so far as applicable, the various extensions to Section 2 of the POLICY, any CONTRACTOR of the INSURED for any CLAIM first made against the CONTRACTOR and notified to US during the POLICY PERIOD arising out of the CONTRACTOR's conduct in the course of the supply or provision of INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES on behalf of the INSURED.

2.3.3 Fidelity

WE agree to provide indemnity to the INSURED against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the INSURED, or for which the INSURED is legally liable, where such loss is sustained in consequence of any dishonest or fraudulent act or omission of any person employed by the INSURED. Provided always that:

- a) such loss if first discovered by the INSURED during the POLICY PERIOD and is notified in writing to US within twenty-eight days of the date of such discovery (but never beyond the expiry date of the POLICY PERIOD);
- b) there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- c) no indemnity in respect of such loss shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- d) the INSURED shall, at OUR request and expense, take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- e) any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the

INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance;

- f) the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent criminal or malicious act or omission or their estates or legal personal representatives;
- g) nothing herein shall preclude US from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- h) the maximum amount payable is \$50,000 which is part of the total LIMIT OF INDEMNITY and not in addition.

3. Public and Products Liability

This is an occurrence based section of the insurance policy.

3.1 Public Liability

3.1.1 Insuring Clause

WE will indemnify the INSURED in respect of the INSURED's civil liability to pay COMPENSATION arising out of

- a) accidental BODILY INJURY to any person
- b) accidental DAMAGE to PROPERTY occurring during the PERIOD OF INSURANCE within the TERRITORIAL LIMITS and arising from and in the course of the INSURED's BUSINESS.

3.1.2 Automatic Extensions

The following extensions are granted as part of the cover provided by Section 3.1.1 but are subject to the terms, conditions, exclusions and limitations of this POLICY.

3.1.3 Motor Vehicles

Exclusion 8.18 (c) shall not apply to liability caused by or arising from

- a) the use of plant as a tool of trade at the INSURED's premises or on any site at which the INSURED is working; or
- b) the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle; or
- c) DAMAGE to any building bridge weighbridge road or to anything beneath caused by vibration or by the weight of any vehicle or its load.

Provided always that WE shall not provide indemnity against liability

- d) in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle; or
- e) for which indemnity is provided by any other insurance.

3.1.4 Leased or Rented Premises

Exclusion 8.19.2 shall not apply to liability for DAMAGE to premises (including their fixtures and fittings) leased or rented

to the INSURED for the purpose of the INSURED'S BUSINESS provided always that WE shall not provide indemnity against

- a) any CONTRACTUAL LIABILITY; or
- b) the first \$1,000 of each and every occurrence of DAMAGE to PROPERTY caused other than by fire or explosion.

3.1.5 Buildings Temporarily Occupied

Exclusion 8.19.2 shall not apply to liability for DAMAGE to buildings (including contents therein) which are not owned leased or rented by the INSURED but are temporarily occupied by the INSURED for the purpose of maintenance, alteration, extension, installation or repair.

3.2 Products Liability

3.2.1 Insuring Clause

WE will indemnify the INSURED in respect of the INSURED's civil liability to pay COMPENSATION arising out of

- a) accidental BODILY INJURY to any person; or
- b) accidental DAMAGE to PROPERTY occurring during the PERIOD OF INSURANCE within the TERRITORIAL LIMITS and caused by any INFORMATION TECHNOLOGY PRODUCT supplied in the course of the INSURED's BUSINESS.

3.2.2 Automatic Extensions To Sections 3.1.1 And 3.2.1

The following extensions are granted as part of the cover provided by Sections 3.1.1 and 3.2.1 (unless stated otherwise) but are subject to the terms, conditions, exclusions and limitations of this POLICY.

3.2.3 Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness at OUR request in connection with a CLAIM in respect of which the INSURED is entitled to indemnity under this

POLICY, WE will reimburse the INSURED at the following rates per day for each day on which attendance is required

- a) any director or partner of the INSURED \$650.00
- b) any EMPLOYEE \$250.00

3.2.4 Indemnity to Other Persons

WE will also indemnify as if a separate POLICY had been issued to each

- a) the legal personal representatives of the INSURED, but only in respect of liability incurred by the INSURED;
- b) under Section 3.1.1 only any PRINCIPAL, but only to the extent required by the contract or agreement for work;
- c) under Section 3.1.1 only any owner of plant hired to the INSURED, but only to the extent required by the conditions of the contract or agreement of hire;
- d) any officer or member of the INSURED's catering, social, sports, educational, medical, dental and welfare organisations and fire, security, first aid and ambulance services in their respective capacity as such, but not any medical or dental practitioner in respect of medical or dental services.

Provided always that

- i) any persons specified above shall as though they were the INSURED be subject to the terms conditions, exclusions and limitations of this POLICY insofar as they can apply; and
- ii) nothing in this Automatic Extension shall increase OUR liability to pay any amount exceeding the LIMIT OF INDEMNITY applicable to Sections 3.1.1 and 3.2.1 regardless of the number of persons claiming to be indemnified.

3.2.5 Cross Liabilities

If the INSURED comprises more than one party WE will provide indemnity to each such INSURED in the same manner and to the same extent as if a separate POLICY had been issued to each of them, provided always that nothing in Section 3.1 or Section 3.2 shall increase OUR liability to pay any amount exceeding the LIMIT OF INDEMNITY of each Section, regardless of the number of persons claiming to be indemnified.

4. Defence Costs and Expenses

WE shall indemnify the INSURED for DEFENCE COSTS (including enquiry costs as per the cover provided in the definition of DEFENCE COSTS) where such costs have been incurred with OUR prior written consent (such consent not to be unreasonably withheld or unreasonably delayed).

If the SCHEDULE states that the DEFENCE COSTS are inclusive then DEFENCE COSTS are part of the INDEMNITY LIMIT and will not be payable in addition to the INDEMNITY LIMIT.

If the SCHEDULE states that the DEFENCE COSTS are in addition then DEFENCE COSTS are payable in addition to the INDEMNITY LIMIT provided always that if the INSURED's liability for any CLAIM is for an amount in excess of the amount of the INDEMNITY LIMIT, then OUR liability for such DEFENCE COSTS shall be in the same proportion as the INDEMNITY LIMIT bears to the sum required to dispose of that CLAIM.

5. Limit of Indemnity

The LIMIT OF INDEMNITY stated in the SCHEDULE in relation to each section applies to that section only and, for the purposes of Sections 2 and 3.2, the LIMIT OF INDEMNITY is to be applied as an aggregate limit in respect of the sum total of all CLAIMS notified during the POLICY PERIOD.

All CLAIMS arising from one or the same source or originating cause shall be deemed to constitute one CLAIM. Under no circumstances will any CLAIM give rise to indemnity under both Section 2 and Section 3.

6. Claims Conditions

The following conditions apply to all sections of this POLICY and any claims made under this POLICY:

6.1 Discovery of a Claim

If during the POLICY PERIOD the INSURED receives notice of any CLAIM that may be covered under this insurance the INSURED will give notice to US as soon as practicable and before the expiry of the POLICY PERIOD.

Notice of any CLAIM will be provided in writing to:

National Head of Claims
australiaclaims@berkleyinaus.com.au
Berkley Insurance Australia
PO Box Q296
QVB NSW 1230

6.2 Admission of Liability

In the event of any CLAIM, the INSURED shall not admit liability and no admission, offer, promise or payment shall be made by the INSURED without OUR prior written consent.

6.3 Conduct of Claims

Following notification of any CLAIM, WE shall be entitled to take over and conduct in the name of the INSURED the investigation, defence or settlement of any such matter. The INSURED shall CO-OPERATE with and give all such assistance as WE may reasonably require.

6.4 Claim Settlements

WE may at any time pay (or agree to pay) to the INSURED in connection with any CLAIM(S) the LIMIT OF INDEMNITY applicable (less the EXCESS and any sums already paid and unpaid DEFENCE COSTS incurred with OUR prior written consent) and upon such payment (or agreement to pay) WE shall not be under any further liability in respect of such CLAIM(S) except for DEFENCE COSTS incurred prior to such payment (or agreement to pay) with OUR prior written consent.

Notwithstanding such payment (or agreement to pay) by US, in no circumstances will WE be liable in respect of such CLAIMS for an amount greater than otherwise provided for in this POLICY.

In the event that:

- 6.4.1 WE have made a payment in excess of the amount for which WE would otherwise have been liable in accordance with the POLICY in respect of such CLAIMS the INSURED shall refund to US that proportion of the payment which exceeds the amount which WE would otherwise have been liable for in accordance with the POLICY.
- 6.4.2 WE have agreed to pay an amount in excess of the amount which WE would otherwise have been liable for in accordance with the POLICY in respect of such CLAIM(S), OUR liability in respect of such agreement shall be limited to the amount which WE would otherwise have been liable for in accordance with the POLICY.

6.5 EXCESS

The INSURED is liable for the amount of any EXCESS stated in the SCHEDULE and WE shall have no liability for the amount of any EXCESS

6.6 OUR and the Insured's Right to Defend

The INSURED shall not be required to contest any legal proceedings taken against them unless a Senior Counsel (to be mutually agreed upon by the INSURED and US, or failing agreement to be appointed by the President of the NSW Bar Association) shall advise that, taking due account of the interests of both US and the INSURED, such proceedings should not be contested.

If the INSURED wishes to continue to contest any CLAIM which WE wish to settle, the INSURED may do so, however, OUR liability in respect of that CLAIM shall thereafter be limited to the amount for which the CLAIM could in fact have been settled, plus DEFENCE COSTS incurred with OUR prior written consent to the date upon which they would have settled it, less the EXCESS.

The above Condition shall only apply to Section 2 of the POLICY.

7. General Conditions

The following general conditions apply to all sections of this POLICY and any claims made under this POLICY:

7.1 Jurisdiction and Service

In the event of a dispute arising under or in connection with this policy, WE at the request of the INSURED, will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

7.2 Terms of Payment

All premiums due to US under this POLICY will be paid within 30 days from the POLICY's inception.

7.3 Cancellation

The circumstances and manner in which this insurance may be cancelled is governed by the Insurance Contracts Act 1984 (Cth).

The INSURED may cancel this insurance at any time by giving 14 days' notice and provided there have been no claims made by the INSURED under this policy the INSURED shall be entitled to a pro rata refund. If the INSURED has made a claim under the policy then the INSURED is not entitled to any refund.

In any event WE are entitled to retain a minimum premium of \$750.00 in the event of cancellation by the INSURED.

7.4 Subrogation

If any payment is made by US, the INSURED grants to US all rights of recovery against any parties from whom a recovery may be made and the INSURED take all reasonable steps to preserve such rights.

8. Exclusions

This insurance shall not indemnify the INSURED against any CLAIM, liability, or loss arising out of, directly or indirectly related to, or in connection with:

8.1 Previously Known Claim or Circumstance

- 8.1.1 any CLAIM actually made upon the INSURED prior to the inception of this POLICY;
- 8.1.2 any fact, matter or circumstance known to the INSURED, at any time prior to the inception of this POLICY, and which the INSURED knew or a reasonable person in the INSURED's profession could, in the circumstances, be expected to know or have known might give rise to a CLAIM against the INSURED ;
- 8.1.3 any fact, matter or circumstance notified by the INSURED to any prior insurer, for the purpose of attaching coverage under an earlier policy to any CLAIM(S) which might arise out of it.

The above exclusion shall not apply to Section 3 of the POLICY.

8.2 Trading Losses and Insolvency

- 8.2.1 any trading losses or trading liabilities incurred by any business managed or carried on by the INSURED, but this exclusion does not apply to any CLAIMS made against the INSURED for negligence in the normal course of the INSURED's conduct of any receivership; or
- 8.2.2 the insolvency of the INSURED.

8.3 Nuclear Risks

any of the following:-

- 8.3.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 8.3.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

8.4 War and Terrorism

any of the following:-

- 8.4.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection,

riot, civil commotion assuming the proportions of or amounting to an uprising, 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;

- 8.4.2 any act or ACT OF TERRORISM, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation
- 8.4.3 any action taken in controlling, preventing, suppressing or in any way relating to 8.4.1 or 8.4.2 above.

The burden of proving that a CLAIM does not fall within this exclusion shall be upon the INSURED.

8.5 USA/Canada

- 8.5.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates, or any judgement registered or lodged in connection with such an action; or
- 8.5.2 any work or activities undertaken by the INSURED in the United States of America, Canada or their dominions or protectorates.
- 8.5.3 INFORMATION TECHNOLOGY PRODUCT supplied by the INSURED which to the knowledge of the INSURED is for use in or supply to the United States of America or Canada.

8.6 Product Supplied under the Insured's Control

any INFORMATION TECHNOLOGY PRODUCT supplied whilst in the custody or under the control of the INSURED or its EMPLOYEES, but this exclusion shall not apply to Section 3.1 of the POLICY.

8.7 Loss of DOCUMENTS - Magnetic or Electrical Media

The physical loss of or damage to DOCUMENTS which are stored on magnetic or electrical media unless such DOCUMENTS are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the DOCUMENTS to their original status.

8.8 Liability arising out of Employment

Bodily injury, mental injury, sickness, disease or death of any employee of the INSURED or damage to or destruction of any property of any employee, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment.

8.9 Directors' and Officers' Liability

The INSURED being a director, officer or trustee of the INSURED (as opposed to those duties and functions carried out in furtherance of the INSURED'S BUSINESS) or from the acceptance of any directorship or trusteeship in any other company not forming part of the INSURED.

8.10 Retroactive Date

The exercise and conduct of the INSURED'S BUSINESS prior to any RETROACTIVE DATE specified in the SCHEDULE. This exclusion only applies to Section 2 of the POLICY.

8.11 Contractual Liability

Any CONTRACTUAL LIABILITY including, without limitation, any contractual term or agreement to pay liquidated damages or any penalty. This exclusion shall not apply to any liability arising out of a condition or warranty implied by law.

8.12 Extensions

Any circumstance or matter in respect of which cover is provided by an extension to this POLICY except to the extent of cover expressly provided for in that extension including, but not limited to:

8.12.1 the Trade Practices Act 1974, Australian Securities and Investments Act 2001 or any State or

Territory Fair Trading Act, except as covered under Automatic Extension 2.2.2;

8.12.2 physical loss of or damage to DOCUMENTS except as covered by Automatic Extension 2.2.3;

8.12.3 any conduct, act, error or omission of any person which is dishonest, fraudulent, criminal or malicious act except as covered by Automatic Extension 2.2.4;

8.12.4 any infringement or alleged infringement of any copyright or patents or other intellectual property rights, except as covered by Automatic Extension 2.2.7;

8.12.5 any newly created or acquired subsidiaries except as covered by Automatic Extension 2.2.11; or

8.12.6 an insured entity or subsidiary which ceases to exist or operate or is consolidated with, merged into or acquired by any other entity except as covered by Automatic Extension 2.2.12.

Exclusion 8.12.6 shall not apply to Section 3 of the POLICY.

8.13 Refund of Professional Fees

The return, refund or disgorgement of any professional fees, charges, commissions or other remuneration of whatsoever kind received by, paid or payable to the INSURED in connection with the INSURED'S BUSINESS.

8.14 Associated Companies

Any CLAIM made against the INSURED by any firm, company or partnership in which the INSURED or any director, partner or principal of the INSURED has a financial or executive interest or which has a financial or executive interest in the INSURED unless emanating from an independent and unrelated third party.

The above exclusion shall not apply to Section 3 of the POLICY.

8.15 Asbestos or Toxic Mould

Asbestos or toxic mould.

8.16 Pollution or Contamination

POLLUTION or CONTAMINATION unless caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the PERIOD OF INSURANCE and provided always that:

8.16.1 all POLLUTION or CONTAMINATION which arises out of such incident shall be deemed to have occurred at the time such incident takes place; and

8.16.2 OUR liability for all COMPENSATION under Sections 3.1.1 or 3.2.1 payable in respect of all POLLUTION or CONTAMINATION which is deemed to have occurred during PERIOD OF INSURANCE shall not exceed in the aggregate the LIMIT OF INDEMNITY for Section 3.1.1 (or Section 3.2.1 if Section 3.1.1 is not operative).

8.17 Cost estimates and Down Time

8.17.1 the inaccurate, inadequate or incomplete description of the price of goods, products or services or as a result of any cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded; or

8.17.2 down time (down time shall mean any time during which a computer or other machine is out of action and/or unavailable). It being understood and agreed that the onus of proof that any CLAIM does not howsoever relate to down time shall be upon the INSURED.

8.18 Motor Vehicle, Aircraft and Watercraft

8.18.1 the ownership possession or operation by or

on behalf of the INSURED of any:

- a) airline, aircraft, aerodrome, airport, spacecraft, or launch sites ; or
- b) hovercraft or watercraft other than hand propelled watercraft or other watercraft not exceeding 8 metres in length; or
- c) mechanically propelled vehicle
 - i) for which compulsory insurance or security is required under any legislation governing the use of the vehicle
 - ii) where indemnity is provided by any other insurance; or
- d) the carrying out of any work or operation within the perimeter of any airport or aerodrome (other than in an area to which public access is permitted without a valid boarding card, or in retail or office premises), or any launch site for spacecraft or of any work or operation on or in any aircraft or spacecraft which may affect the control, navigation or safety of such craft.

8.19 Damage to Property

DAMAGE to PROPERTY

- 8.19.1 belonging to the INSURED; or
- 8.19.2 in the custody or under the control of the INSURED or any EMPLOYEE exceeding \$50,000 other than personal effects (including vehicles and their contents) of any visitor director partner or EMPLOYEE of the INSURED;
- 8.19.3 being that part of any PROPERTY on which the INSURED or any EMPLOYEE or agent of the INSURED is or has been working where the DAMAGE arises out of such work;

The above exclusion shall not apply to the extension of cover granted by Section 2.2.3.

8.20 Recall, Repair or Replacement

the costs or expenses of recalling, repairing, replacing, altering, removing, rectifying, reinstating or making any refund in respect of any INFORMATION TECHNOLOGY PRODUCT and or INFORMATION TECHNOLOGY SERVICE provided and or supplied by or the INSURED.

8.21 Known Defects

the supply or provision of any INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES that the INSURED knew, or should reasonably have known, to be defective, ineffective or incapable of substantially fulfilling the essential purpose for which they were intended or the essential purpose which they were required to perform as specified, warranted (whether express or implied) or guaranteed.

8.22 Viruses, Firewalls, Misuse of personal information and Offensive Materials

- 8.22.1 transmission of a virus;
- 8.22.2 breach of a computer firewall, security system or system designed to prevent unauthorized access;
- 8.22.3 any misuse (or unauthorized use) of personal identifying information; or
- 8.22.4 any obscenity, blasphemy or pornographic material.

8.23 Bodily Injury and Property Damage

- 8.23.1 any BODILY INJURY to any person or loss of or DAMAGE to PROPERTY which is attributable to the supply or provision of INFORMATION TECHNOLOGY SERVICES in respect of any INFORMATION TECHNOLOGY PRODUCT; or
- 8.23.2 any harassment of any kind or sexual molestation.

Exclusion 8.23.1 shall not apply to Section 3 of this POLICY, nor to Automatic Extension 2.2.3 or (where applicable) Optional Extension 2.3.3.

8.24 Excluding services or advice not in conjunction with Information Technology Products

Any breach of professional duty in respect of INFORMATION TECHNOLOGY SERVICES other than where such services are provided in respect of any INFORMATION TECHNOLOGY PRODUCT.

The above exclusion shall not apply to Section 2 of this POLICY.

8.25 Aviation and Marine Products

Any INFORMATION TECHNOLOGY PRODUCTS which, to the knowledge of the INSURED, are for

- 8.25.1 use in or on any aircraft or aero spatial device
- 8.25.2 aviation or aero spatial purposes
- 8.25.3 use in the safety or navigation or navigation of marine craft of any sort.

This exclusion shall only apply to Section 3.2 of this POLICY.

8.26 Products Liability

Any INFORMATION TECHNOLOGY PRODUCT except in circumstances where BODILY INJURY or DAMAGE to PROPERTY occurs as a result of such product being in the custody or control of the INSURED.

This exclusion shall only apply to Section 3.1 of this POLICY.

To the extent that any parts of any of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect. Except where stated to the contrary, the exclusions apply to all sections of cover, including any extensions to cover.

9. Definitions and Interpretations

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear in capital letters and whether they are used in the plural or singular form, they are deemed to have the meaning set out below:-

9.1 ACT OF TERRORISM

Shall mean the actual or threatened

- 9.1.1 use of force or violence against persons or PROPERTY
- 9.1.2 commission of an act dangerous to human life or PROPERTY or
- 9.1.3 commission of an act that interferes with or disrupts an electronic or communication system undertaken by any person or group whether or not acting on behalf of or in connection with any organisation government power authority or military force when any of the following applies
- 9.1.4 the reasonably apparent intent or effect is to intimidate or coerce a government or business or to disrupt any segment of the economy
- 9.1.5 the reasonably apparent intent or effect is to cause alarm fright fear of danger or apprehension of public safety in one or more distinct segments of the general public or to intimidate or coerce one or more such segments or
- 9.1.6 the reasonably apparent intent or effect is to further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture

9.2 BODILY INJURY

Shall mean

- 9.2.1 death illness or disease
- 9.2.2 physical or mental injury mental anguish or shock but not defamation, libel, slander, deceit or injurious falsehood, discrimination or advertising injury.

9.3 CLAIM

9.3.1 for the purposes of Section 2 shall mean:

- a) any writ, application, summons or other

originating legal process, cross claim or counter claim issued against or served on the INSURED claiming damages or other compensatory remedy; or

- b) the positive assertion in writing of a legal entitlement to damages or other compensatory remedy in connection with an alleged civil liability on the part of the INSURED, in terms evincing an intention to pursue it;

9.3.2 for the purposes of Section 3 shall mean a claim by the INSURED under this POLICY.

9.4 CONTRACTUAL LIABILITY

Shall mean liability which attaches by virtue of a contract or agreement but only to the extent to which it would not have attached in the absence of such contract or agreement.

9.5 CONTRACTOR

Shall mean a person or other entity contracted to provide and/or supply INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES either to the INSURED, or to the INSURED'S customer, pursuant always to the provision of a written contract to provide and or supply such INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES.

9.6 COMPENSATION

Shall mean all sums which the INSURED shall be legally liable to pay as compensation other than fines or penalties, punitive, exemplary or aggravated damages, or any additional damages resulting from the multiplication of compensatory damages. The term COMPENSATION shall be deemed to include claimants costs and expenses.

9.7 CO-OPERATE

Shall mean that the INSURED:

- 9.7.1 assists US and OUR duly appointed representatives to put forward the best possible defence of a CLAIM within the time constraints available;
- 9.7.2 shall have adequate internal systems in place, which will allow ready access to material information; and

9.7.3 shall at all times and at its own cost give to US or OUR duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

9.8 DAMAGE

Shall mean loss of or damage to PROPERTY

9.9 DEFENCE COSTS

Shall mean all costs and expenses (except the INSURED's own time or that of its EMPLOYEES unless covered by Automatic Extension 3.2.3) incurred in the investigation, defence or settlement of

9.9.1 any claim brought, or which may be brought, against the INSURED in relation to any matter which may be the subject of indemnity under Section 3 of this POLICY; or

9.9.2 any CLAIM in respect of which WE are liable to indemnify the INSURED under Section 2 of this POLICY.

DEFENCE COSTS shall also include the costs and expenses of representation at any inquiry or other proceedings which have a direct effect on the defence of any CLAIM notified under the terms of this POLICY, however the amount payable by US throughout the POLICY PERIOD, in respect of all costs and expenses incurred in connection with such inquiries or proceedings shall not, in the aggregate, exceed \$25,000, regardless of the number of CLAIMS notified.

9.10 DOCUMENTS

Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, bank or currency notes and other negotiable paper.

9.11 EMPLOYEE

Shall mean

9.11.1 any person under a contract of service or apprenticeship with the INSURED

9.11.2 any self-employed person or contractor hired by the INSURED

9.11.3 any person engaged under a work experience government training or similar scheme whilst working for the INSURED in connection with the INSURED'S BUSINESS.

9.12 EXCESS

Shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and also, for the purposes of Section 3, shall be the first amount of each occurrence or series of occurrences arising out of a single discrete event. The EXCESS shall be inclusive of DEFENCE COSTS.

9.13 INFORMATION TECHNOLOGY PRODUCTS

Shall mean any information technology product including computer hardware, computer firmware, computer software or other electronic computer device designed, specified, manufactured, installed, sold or supplied by the INSURED.

9.14 INFORMATION TECHNOLOGY SERVICES

Shall mean services or advice including consultancy services, design, specification, training, testing, data processing, project management, project implementation, analysis or maintenance and data hosting services supplied by the INSURED.

9.15 INSURED'S BUSINESS

Shall mean the business as described in the SCHEDULE provided that such description shall at all times be interpreted by reference to the INFORMATION TECHNOLOGY PRODUCTS or INFORMATION TECHNOLOGY SERVICES declared in the INSURED's proposal and those activities accepted by US and shall for the purposes of Section 3.1 and 3.2 include

9.15.1 the provision and management of catering social sports educational medical dental and welfare organisations for the benefit of the INSURED'S EMPLOYEE'S and fire security first aid and ambulance services; and

9.15.2 the ownership repair maintenance and decoration of the INSURED's premises;

9.15.3 private work carried out by any EMPLOYEE of the INSURED (with the consent of the INSURED) for any director partner or senior official of the INSURED.

9.16 INSURED

Shall mean the person(s), partnership, company or other entity named as the INSURED in the SCHEDULE including any predecessors in business named in the proposal submitted to US.

9.17 INTELLECTUAL PROPERTY RIGHTS

Shall mean rights in relation to copyright, trademark and domain name.

9.18 LIMIT OF INDEMNITY

Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of

each CLAIM provided that all CLAIMS payable under this insurance shall not exceed in the aggregate the limit shown in the SCHEDULE.

9.19 POLICY

Shall mean and include

- 9.19.1 all information provided to US as part of the PROPOSAL for issuance renewal or amendment of or to the insurance set out in this document
- 9.19.2 all terms (including without limitation the conditions and the exclusions) and Limits of Indemnity set out in this document
- 9.19.3 the SCHEDULE, notices and other documents attaching from time to time
- 9.19.4 all endorsements incorporated in and issued from time to time for incorporation in this document all of which shall be read together and constitute the contract of insurance

9.20 POLICY PERIOD

Shall mean the period shown in the SCHEDULE plus any extensions to the period which may be granted by US.

9.21 POLLUTION or CONTAMINATION

Shall mean the discharge dispersal release or escape of smoke vapours soot fumes acids alkalis toxic chemicals liquids or gases waste materials or other irritants contaminants or pollutants into or upon buildings or structures or of water or land or the atmosphere and

- 9.21.1 all DAMAGE to PROPERTY or BODILY INJURY directly or indirectly caused by or arising from such pollution or contamination as described in 9.21 above.

9.22 PRINCIPAL

Shall mean any person partnership company ministry or authority for whom the INSURED is carrying out a contract or agreement for the performance of work.

9.23 PROPERTY

Shall mean tangible property.

9.24 PROPOSAL

Shall mean any information provided by the INSURED in the proposal form and/or in connection with this POLICY and any declaration made in connection therewith.

9.25 RETROACTIVE DATE

Shall mean the date noted in the SCHEDULE.

9.26 SCHEDULE

Shall mean the document entitled Schedule that relates to this insurance.

9.27 TERRITORIAL LIMITS

Shall mean anywhere in the world excluding the USA and Canada and their dominions or protectorates.

9.28 WE, US, OUR

Shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.