Information Technology Professional Indemnity Wording

Keystone Underwriting Pty Ltd
Phone: 1300 946 530
Email: contact@ksua.com.au Website: www.keystoneunderwriting.com.au

Table of Contents

Wording 3

1. Definitions 3
2. Insuring Clause 6
3. Civil Liability Clarification 6
4. Automatic Extensions 7
5. Optional Extensions 11
6. Exclusions 13
7. Claims Conditions 16
8. Conditions 17

Important Information 21

Wording

The **Insured** and **Keystone** agree that **Keystone** will provide insurance in accordance with the terms of this **Policy** upon payment of the **Premium** as shown in the **Schedule**, and upon submission by the **Insured** of the **Proposal**, the contents on which **Keystone** will rely.

1. Definitions

1.1 **Claim** means:

1.1.1 any written demand for compensation or damages or assertion of a financial right made by a third party to the **Insured**; or

1.1.2 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured** that claims compensation, damages or other civil rights or remedies against the **Insured**.

1.2 **Control** has the meaning given by section 50AA of the *Corporations Act 2001*.

1.3 **Costs and Expenses** means all reasonable legal fees, legal costs and other expenses incurred by or on the **Insured's** behalf, with **Keystone's** prior consent, in the investigation, defence or settlement of any **Claim** and/or for the representation or attendance at any **Inquiry**.

Costs and Expenses does not include salaries, wages, allowances, travel or accommodation expenses incurred by the **Insured** in assessing, investigating, dealing with and/or assisting others to deal with any **Claim** and/or assisting others for the representation or attendance at any **Inquiry**.

1.4 **Documents** means deeds, wills, agreements, maps, plans, records, computer records, electronic data, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which is the property of the **Insured** or for which the **Insured** is legally responsible.

1.5 **Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by the **Insured** and includes any trainee, volunteer, casual, part-time, seasonal, temporary, or work experience personnel.

1.6 **Employment Claim** means:

1.6.1 civil, arbitration or dispute resolution proceeding made, or communicated to or commenced against an **Insured** by or on behalf of any **Employee** alleging an **Employment Practice Breach**; or

1.6.2 written demand for monetary relief or non-pecuniary relief; made, or communicated to or commenced against an **Insured** by or on behalf of any **Employee** alleging an **Employment Practice Breach**; or

1.6.3 **Inquiry** in relation to any actual or alleged **Employment Practice Breach**.

1.7 **Employment Practice Breach** means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:

1.7.1 employment related:

1.7.1.1 sexual or other unlawful harassment (including bullying); or

1.7.1.2 unlawful discrimination; or

1.7.1.3 denial of natural justice; or

1.7.1.4 defamation; or

1.7.1.5 invasion of privacy;

1.7.2 unlawful termination of employment; or

1.7.3 false or misleading advertising or representation involving terms or conditions of employment; or

1.7.4 failure to employ, promote or grant tenure; or

1.7.5 unfair deprivation of career opportunity; or

1.7.6 unfair discipline or evaluation of employment performance; or

1.7.7 failure to provide or adhere to adequate employment policies or procedures; or

1.7.8 violation of any federal, state or local statute or regulation governing employment practices; or

1.7.9 breach of employment contract,

with respect to any natural person, who was, now is or becomes an **Employee** of the **Insured** including prospective employees.

1.8 **Employment Related Benefits** includes but is not limited to:

1.8.1 non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances; or

1.8.2 stock, shares, stock options, share options or any entitlement or right under any employee plan of any description; or

1.8.3 participation in any stock, share option or share option plan, or participation in any employee plan of any description; or

1.8.4 severance or redundancy payments or entitlements; or

1.8.5 any benefit, payment or entitlement of any kind in respect of paid or unpaid leave; or

1.8.6 bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme); or

1.8.7 payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event; or

1.8.8 any amount the **Insured** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

1.9 **Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

1.10 **Excess** means the amount specified in the **Schedule** for the type of cover specified.

1.11 **Fair Trading Legislation** means the *Fair Trading Act 1987 (NSW),* or the *Fair Trading Act 1985 (Vic)* or similar legislation enacted by the other states or territories of Australia.

1.12 **Fraudulent Act** means any dishonest, wrongful, deceptive, criminal, malicious or unauthorised act or omission committed by an **Employee**.

1.13 **Information Technology Products** means any electronic equipment, communication equipment or computer hardware or software created, designed, manufactured, sold, licensed, handled or distributed by the **Insured**.

1.14 **Information Technology Services** means:

1.14.1 software development; and/or

1.14.2 systems integration; and/or

1.14.3 information management consulting; and/or

1.14.4 electronic data processing; and/or

1.14.5 computer facilities management; and/or

1.14.6 computer programming; and/or

1.14.7 design, manufacture and installation of **Information Technology Products**; and/or

1.14.8 computer and electronic equipment maintenance and repair; and/or

1.14.9 computer and data network analysis, consulting and design; and/or

1.14.10 telecommunication and data communication services; and/or

1.14.11 internet services; and/or

1.14.12 network consulting and support services; and/or

1.14.13 call centre services; and/or

1.14.14 as detailed in the **Schedule**.

1.15 **Inquiry** means an official investigation, examination, tribunal, inquiry or other official proceeding by any official body or institution empowered by law to investigate the professional conduct of the **Insured** including but not limited to a coroner's court, Royal Commission, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any parliament or any committee of a parliament.

1.16 **Insured** means:

1.16.1 the person or entity named as the insured in the **Schedule**; and/or

1.16.2 any **Subsidiary**; and/or
1.16.3 any past and/or present **Employee** of the **Insured** or **Subsidiary**, but only in his or her capacity as such; and/or
1.16.4 any past and/or present **Principal** of the **Insured** or **Subsidiary**, but only in his or her capacity as such; and/or
1.16.5 the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.

1.17 **Keystone** means Keystone Underwriting Pty Ltd ABN 78 601 944 763 as Corporate Authorised Representative (No. 000468712) of Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFSL 518224 which is acting on behalf of **Underwriters**.

1.18 **Known Circumstance** means any act, error or omission, fact, matter or circumstance, event or occurrence, known or received by the **Insured** prior to the **Period of Insurance**:
1.18.1 which the **Insured** knew; or
1.18.2 which a reasonable person in the **Insured's** position ought to or would have known or been aware, might give rise to a **Claim** and/or an **Inquiry** or an allegation or a liability that is or may be the subject of a **Claim** and/or an **Inquiry**.

1.19 **Limit of Liability** means the amount specified in the **Schedule**.

1.20 **Maximum Aggregate Limit of Liability** means the amount specified in the **Schedule**.

1.21 **Merger or Acquisition** means:
1.21.1 the **Insured** consolidating with, merging into or selling all or substantially all of its assets such that the **Insured** is not the surviving entity; or
1.21.2 any entity obtaining **Control** of the **Insured**.

1.22 **New Subsidiary** means a subsidiary, as defined in the *Corporations Act 2001*, of the **Insured** which is acquired by the **Insured** during the **Period of Insurance**.

1.23 **Period of Insurance** means the period specified in the **Schedule**, unless terminated earlier.

1.24 **Policy** means the **Schedule**, the terms of this document and any **Endorsement**.

1.25 **Pollutants** means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear or radioactive material of any sort, chemicals, or waste materials.

1.26 **Premium** means the amount specified in the **Schedule**.

1.27 **Principal** means a sole practitioner, a partner of a firm or a director of a company.

1.28 **Principal Insured** means the **Insured** or if the **Insured** is more than one person or entity, the first person or entity listed as the 'Insured' in the **Schedule**.

1.29 **Proposal** means the written proposal or declaration made by the **Insured** to **Keystone** containing particulars and statements together with other information provided by the **Insured**.

1.30 **Public Relations Expenses** means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from a **Claim** or **Inquiry**, which the **Insured** may engage with the prior written consent of **Keystone**.

1.31 **Relative** means:
1.31.1 an **Insured's**:
1.31.1.1 **Spouse**, domestic partner or defacto; or
1.31.1.2 parent; or
1.31.1.3 children or siblings; or
1.31.1.4 the **Spouse**, domestic partner, defacto, parent, child or sibling of a **Relative** specified in *1.31.1.1, 1.31.1.2*, and *1.31.1.3* above; or
1.31.2 a parent of an **Insured's Spouse**, domestic partner or defacto.

1.32 **Retroactive Date** means the date specified in the **Schedule**.

1.33 **Schedule** means the current schedule issued by **Keystone** to the **Insured**.

1.34 **Spouse** means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

1.35 **Statutory Liability** means pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.

1.36 **Subsidiary** means a subsidiary, as defined in the *Corporations Act 2001*, of the **Insured**, which:
- **1.36.1** was a subsidiary at the commencement date of the **Period of Insurance**; or
- **1.36.2** is created by the **Insured** during the **Period of Insurance**; or
- **1.36.3** is a former subsidiary of the **Insured**, only in respect of civil liability arising out of any act, error or omission occurring prior to the date such subsidiary ceased to be a subsidiary of the **Insured**.

1.37 **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

1.38 **Underwriters** means certain Underwriters at Lloyd's participating in this contract of insurance.

2. Insuring Clause

2.1 **Keystone** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** during the **Period of Insurance** and notified to **Keystone** during the **Period of Insurance** resulting from the provision of **Information Technology Services**.

2.2 **Keystone** will indemnify the **Insured** for **Costs and Expenses** incurred with **Keystone's** prior consent for the investigation, defence or settlement of any **Claim** indemnified by Insuring Clause *2.1*.

3. Civil Liability Clarification

For the avoidance of doubt the scope of cover provided under the Insuring Clause includes:

Competition and Consumer Act

3.1 any breach or alleged breach of any provision of the *Competition and Consumer Act 2010* or the equivalent section(s) of the **Fair Trading Legislation** in any state and territory but only where the **Claim** was caused directly by such a breach;

Confidentiality and Privacy

3.2 any breach or alleged breach of privacy;

Contractual Liability

3.3 a contractual liability, provided that any such liability is not excluded under Exclusion *6.2 Assumed and Proportionate Liability* or any other Exclusion in this **Policy**;

Defamation, Libel and Slander

3.4 any actual or alleged defamation, libel or slander but only where, upon **Keystone's** reasonable request, the **Insured** issues an apology; or an expression of regret; or an offer to make amends under the Defamation Act as it applies in each state of Australia. If the **Insured** refuses to issue an apology or an expression of regret; or an offer to make amends, **Keystone** will not be liable to defend or indemnify the **Insured** in respect of any **Claim** after the date of such refusal;

Intellectual Property

3.5 any infringement or alleged infringement of copyright, trademarks, registered designs or patents;

Liability for Acts, Errors or Omissions of Contractors, Consultants and Agents

3.6 acts, errors or omissions of contractors, consultants or agents provided that **Keystone** will only indemnify the **Insured** for its civil liability for **Information Technology Services** provided by the contractors, consultants or agents. Indemnity will not extend to the contractors, consultants or

agents who committed the act, error or omission, except to the extent provided for in Optional Extension *5.1 Contractors, Consultants or Agents*;

Liquidated Damages

3.7 liquidated damages, provided that **Keystone** will not be liable for any liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.

4. Automatic Extensions

The Automatic Extensions are all subject to the terms and conditions of this **Policy** unless expressly stated otherwise. The **Excess** and the **Limit of Liability** (including any sub-limits) specified in the **Schedule** apply to the Automatic Extensions and the Automatic Extensions do not increase the **Limit of Liability** nor the **Maximum Aggregate Limit of Liability**.

Advancement of Costs and Expenses

4.1 **Keystone** will advance **Costs and Expenses**, incurred by **Keystone** or the **Insured** with **Keystone's** prior written consent, as they are incurred and prior to final adjudication of a **Claim** or **Inquiry**. **Keystone** may not refuse to advance **Costs and Expenses** by reason only that **Keystone** considers that conduct referred to in Exclusion *6.6 Dishonest or Wilful Acts* has occurred, until such conduct is established by a formal written admission by the relevant **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by **Keystone**). **Keystone** will cease to advance such costs and any amounts previously advanced shall be repaid to **Keystone** if, and to the extent that, the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**.

Compensation for Court Attendance

4.2 **Keystone** will pay the **Insured** compensation if legal advisers, acting on the **Insured's** behalf with **Keystone's** consent, require any **Principal** or **Employee** to attend court as a witness in connection with a **Claim** covered under this **Policy** first made and notified to **Keystone** during the **Period of Insurance**, but only in circumstances where the **Insured** actually pays the **Principal** or **Employee** for their time.

4.3 Such compensation by **Keystone** will be at the rate equivalent to such **Principal's** or **Employee's** daily take home salary or wage up to the maximum indicated in the **Schedule** per person for each day on which attendance is required subject to the maximum indicated in the **Schedule** for all persons for any one **Claim**. All payments under this Automatic Extension will be part of and not in addition to the **Limit of Liability**.

Continuous Cover

4.4 **Keystone** will indemnify the **Insured** under the Insuring Clause for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from circumstances of which the **Insured** were aware prior to the **Period of Insurance** notwithstanding Exclusion *6.15 Prior Reported or Known Circumstances*, provided that:

4.4.1 **Keystone** was the **Insured's** professional indemnity insurer at the time that the **Insured** first became aware of the circumstance and **Keystone** have continued to be the **Insured's** professional indemnity insurer; and

4.4.2 the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**; and

4.4.3 **Keystone** will reduce its liability to the extent of any prejudice suffered because of the **Insured's** failure to notify such facts prior to the commencement of the **Period of Insurance**; and

4.4.4 the **Limit of Liability** under this Automatic Extension shall be the lesser available under the terms of the policy in force at the time that the **Insured** first became aware of the circumstance and this **Policy**. The terms of this **Policy** will otherwise apply.

Costs and Expenses in Addition

4.5 **Keystone** will, in addition to the **Limit of Liability**, pay **Costs and Expenses** for **Claims** covered under this **Policy**. This is only if the total amount of compensation and claimant's costs and expenses required to dispose of any one **Claim** exceeds the **Limit of Liability**, in which case the liability of **Keystone** for **Costs and Expenses** shall be only that proportion of them that the **Limit**

of Liability bears to the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim**.

Dishonesty

4.6 **Keystone** will indemnify the **Insured** against all sums which the **Insured** becomes legally liable to pay for any **Claim** first made against the **Insured** and notified to **Keystone** during the **Period of Insurance** arising from the provision of **Information Technology Services** by the **Insured** as a result of any actual or alleged dishonest or fraudulent acts or omissions of a **Principal** or **Employee** provided that:

4.6.1 **Keystone** will not indemnify any person who commits or condones any such conduct; and

4.6.2 no cover is provided under this Automatic Extension in respect of a **Claim** arising from or in any way connected with loss of money; and

4.6.3 there is no indemnity for any loss or damage sustained after the date the **Insured** first discovered any such conduct, or the date upon which the **Insured** had reasonable cause for suspicion of such conduct; and

4.6.4 the **Insured** will, at **Keystone's** request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such conduct; and

4.6.5 the amount of indemnity available under this **Policy** will be reduced by any amount equal to the sum of any monies recoverable from any person committing or condoning such conduct, any monies owed by the **Insured** to any such person, any monies held by the **Insured** and belonging to any such person, and any monies recovered by **Keystone** from exercising **Keystone's** rights of subrogation.

4.7 **Keystone** will indemnify the **Insured** for **Costs and Expenses** incurred with **Keystone's** prior consent for the investigation, defence or settlement of any **Claim** indemnified by this Automatic Extension.

Extended Reporting Period

4.8 The **Principal Insured** will be entitled to purchase an extended reporting period of 365 days in the event that this **Policy** is neither renewed nor replaced at the end of the **Period of Insurance** with insurance that covers substantially the same risk exposure as this **Policy**. The extended reporting period begins immediately following the expiry of the **Period of Insurance** and ends on the earlier of 4.p.m. on the three hundred and sixty fifth day thereafter, or at the time on the effective date on which the **Insured** obtains insurance that covers substantially the same risk exposure as this **Policy**. The additional premium for the extended reporting period will be 100% of the **Premium**. If the extended reporting period ends because the **Insured** obtains insurance that covers substantially the same risk exposure as this **Policy** then **Keystone** will retain a short-term premium calculated at the pro rata proportion of the additional premium and the **Principal Insured** will receive a refund of any balance of the premium, unless there have been any notifications during the **Period of Insurance** or the extended reporting period, in which case no refund shall be given. The entitlement to purchase the extended reporting period lapses upon expiry of the **Period of Insurance**. The application to purchase the extended reporting period must be received by **Keystone** prior to the expiry of the **Period of Insurance**, and payment of the additional premium must be made to **Keystone** within thirty (30) days of the same date. The **Insured** may continue to notify **Keystone** of **Claims** during the extended reporting period, but only **Claims** based on any act, error or omission committed or alleged to have been committed prior to expiry of the **Period of Insurance**. Any notification to **Keystone** during this extended reporting period will be deemed to have been first notified to **Keystone** during the **Period of Insurance**.

Free Legal Consultation

4.9 The **Insured** is entitled to up to thirty (30) minutes of free legal advice from **Keystone's** appointed legal firm on any matter relating to the provision of **Information Technology Services** by the **Insured** during the **Period of Insurance** subject always to the following:

4.9.1 the **Schedule** must be presented to the appointed legal firm when requesting legal advice under this Automatic Extension. If the **Schedule** is not presented then no legal advice can be sought under this Automatic Extension; and

4.9.2 entitlement to the legal advice is limited to a maximum of thirty (30) minutes per year and any unused time cannot be aggregated from one **Period of Insurance** to another; and

4.9.3 **Keystone** reserve the right to change the appointed legal firm at any time. Changes to the appointed firms will be notified to the **Insured** on request; and

4.9.4 the **Insured** may not seek legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Keystone**; and

4.9.5 the **Insured** authorises **Keystone** (at **Keystone's** discretion) to engage the appointed legal firm to represent the **Insured** and authorise the appointed firm when engaged to disclose to **Keystone** any information obtained in the cause of tendering advice to the **Insured** if cover under this **Policy** is sought by the **Insured** in respect of any matter on which the **Insured** may have sought legal advice under this Automatic Extension from the appointed legal firm. The **Insured** waives all claims to legal professional privilege with **Keystone** to the extent necessary; and

4.9.6 contacting the appointed legal firm for legal advice does not constitute a **Claim** notification under *Clause 7 Claims Conditions* of this **Policy**. The **Insured** must still comply with this **Policy's** terms and conditions in relation to a **Claim** and give immediate written notice or written notice as soon as practically possible to **Keystone** within the **Period of Insurance**.

Inquiries

4.10 **Keystone** will pay all **Costs and Expenses** incurred with **Keystone's** prior consent for the attendance by the **Insured** at any **Inquiry** provided that:

4.10.1 **Keystone** will have the right to appoint legal representatives to represent the **Insured** at the **Inquiry** if **Keystone** considers it to be necessary and may appoint legal representatives of **Keystone's** choice for that purpose; and

4.10.2 the **Inquiry** is commenced, ordered or commissioned during the **Period of Insurance** and is notified to **Keystone** during the **Period of Insurance**.

4.11 **Keystone** will not, however, cover any legal costs associated with an appeal of a decision made as a result of an **Inquiry.**

4.12 The **Excess** shall apply to each and every **Inquiry**.

Joint Ventures

4.13 **Keystone** will indemnify the **Insured** under the Insuring Clause or the Extensions for any **Claim** in respect of the **Insured's** proportion of liability for the **Insured's** conduct in a joint venture, provided that the **Claim** is first made and notified to **Keystone** during the **Period of Insurance**.

Loss of Documents

4.14 **Keystone** will pay to or on behalf of the **Insured**, reasonable costs and expenses incurred by the **Insured** for loss of or damage to **Documents** (including but not limited to **Documents** which have been destroyed, lost or mislaid after appropriate searches) which are in the **Insured's** physical custody or control, provided that:

4.14.1 the loss of or damage is sustained and notified to **Keystone** during the **Period of Insurance**; and

4.14.2 the indemnity for this Automatic Extension is limited to the costs, charges and expenses in restoring or replacing the lost or damaged **Documents**; and

4.14.3 the costs, charges and expenses are supported by invoices and/or accounts submitted to **Keystone** for **Keystone's** approval; and

4.14.4 any document kept in magnetic or electronic form is duplicated with the intention that the back-up or duplicate document be used as the basis for restoring any lost or damaged **Document** to its original status; and

4.14.5 this Automatic Extension does not extend to indemnify the **Insured** for:

4.14.5.1 the loss or damage to any **Document** the property of or entrusted to the **Insured** by a third party; or

4.14.5.2 damage to any **Document** caused by normal wear and tear; or

4.14.5.3 for corruption, theft, interference with, lack of access to electronically stored data caused or contributed to by a computer virus or a third party where such costs, charges and expenses relate to the replacement / restoration of such data after a period or more than 48 hours after the computer virus or act took place or effect.

Mitigation of Loss

4.15 **Keystone** will indemnify the **Insured** for the direct costs and expenses necessarily and reasonably incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a **Claim** under this **Policy** provided that:

4.15.1 the **Insured** first discovers the relevant act, error or omission which would give rise to the loss during the **Period of Insurance** and notifies **Keystone** during the **Period of Insurance**; and

4.15.2 the **Insured** provides written notice to **Keystone** during the **Period of Insurance** of their intention to take such action prior to incurring any costs and expenses; and

4.15.3 the **Insured** obtains from **Keystone** a written consent prior to incurring such costs, such consent not to be unreasonably withheld; and

4.15.4 the onus of proving entitlement to indemnity pursuant to this Automatic Extension shall be upon the **Insured**; and

4.15.5 the costs and expenses incurred by the **Insured** in proving entitlement to indemnity pursuant to this Automatic Extension shall be met by the **Insured**; and

4.15.6 **Keystone's** total liability under this Automatic Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Indemnity**.

Newly Acquired Subsidiary

4.16 If the **Insured** acquires a **New Subsidiary**:

4.16.1 that has total annual fee income (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) no greater than 25% of the total annual fee income of the **Insured** as disclosed in the **Proposal**, the definition of **Insured** will be extended to include such **New Subsidiary** in respect of any **Claim** first made against the **Insured** and notified to **Keystone** during the period beginning on the date of acquisition resulting from the provision of **Information Technology Services** by such **New Subsidiary**, but not in respect of any such **Claim** resulting from any act, error or omission occurring or committed prior to the date the **New Subsidiary** was acquired; or

4.16.2 that has total annual fee income (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) of greater than 25% of the total annual fee income of the **Insured** as disclosed in the **Proposal**, the definition of **Insured** will also include such **New Subsidiary** in respect of any **Claim** first made against the **Insured** and notified to **Keystone** during the period beginning on the date of acquisition and ending sixty (60) days thereafter or at the expiry of the **Period of Insurance**, whichever is the lesser period, resulting from the provision of **Information Technology Services** by such **New Subsidiary**, but not in respect of any such **Claim** resulting from any act, error or omission occurring or committed prior to the date the **New Subsidiary** was acquired. **Keystone** may, at its discretion, offer to extend cover for the **New Subsidiary**. In order for cover for such **New Subsidiary** to be extended beyond the period stated in 4.16.2 above, the **Insured** must, prior to the end of that period:

4.16.2.1 give **Keystone** written notice of any such acquisition together with such additional information as **Keystone** may require so that **Keystone** can exercise its discretion whether to extend the cover;

4.16.2.2 accept any notified alteration in the terms of this **Policy**; and

4.16.2.3 pay any additional premium required by **Keystone**.

4.17 This Automatic Extension does not extend cover:

4.17.1 to any **New Subsidiary** that is domiciled or incorporated in the United States of America or its territories or protectorates; and

4.17.2 in respect of the provision of **Information Technology Services** that are not the same as those conducted by the **Insured** and covered under this **Policy** prior to the acquisition of such **New Subsidiary**.

Public Relations Expenses

4.18 **Keystone** will indemnify the **Insured** for **Public Relations Expenses** incurred by the **Insured** during the **Period of Insurance**.

4.19 **Keystone's** total liability under this Automatic Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Indemnity**.

Reinstatement of the Limit of Liability

4.20 **Keystone** agrees to reinstate the **Limit of Indemnity** for the exhausted insurance the number of times specified in the **Schedule** up to the **Maximum Aggregate Limit of Liability for this**

Policy while the **Limit of Liability** for any one **Claim** remains unchanged, if the **Limit of Liability** is exhausted during the **Period of Insurance**.

Run-Off Cover if the Insured Ceases to Exist or Operate

4.21 **Keystone** will indemnify the **Insured** under the Insuring Clause and the Extensions in respect of any **Claim** or **Inquiry** first made against the **Insured** and notified to **Keystone** during the **Period of Insurance** if the **Insured** ceases to exist or operate, or are consolidated with, merged into, or acquired by any other entity, but only in respect of a **Claim** or **Inquiry** arising from events or occurrences, acts, errors or omissions occurring prior to the date that the **Insured** ceased to exist or operate, or were consolidated with, merged into or acquired by another entity.

4.22 **Keystone** will indemnify the **Insured's** former **Principals** and **Employees** under the Insuring Clause and the Extensions in respect of any **Claim** or **Inquiry** first made against the **Insured's** former **Principal** or **Employee** and notified to **Keystone** during the **Period of Insurance** but only in respect of a **Claim** or **Inquiry** arising from events or occurrences, acts, errors or omissions occurring while the **Principal** or **Employee** was employed by the **Insured**.

Sixty Day Reporting Period

4.23 The **Insured** may continue to notify **Keystone** of **Claims** up to sixty days after the expiry of the **Period of Insurance**, but only for **Claims** first made against the **Insured** during the **Period of Insurance** and based on any act, error or omission committed or alleged to have been committed prior to the expiry of the **Period of Insurance**.

4.24 Any notification to **Keystone** during this sixty-day reporting period will be deemed to have been first notified to **Keystone** during the **Period of Insurance**.

Spousal Liability

4.25 A **Spouse's** legal liability for compensation resulting from a **Claim** or **Inquiry** against the **Insured's Spouse** solely by reason of:

4.25.1 such **Spouse's** legal status as the **Insured's Spouse**; or

4.25.2 such **Spouse's** ownership or interest in property that the claimant seeks to recover because of a **Claim** or **Inquiry** made against the **Insured**,

will be treated for the purposes of this **Policy** as the **Insured's** liability.

4.26 This Automatic Extension does not apply to the extent that the **Claim** or **Inquiry** alleges any act, error or omission by the **Insured's Spouse**.

Statutory Liability

4.27 **Keystone** will pay to or on behalf of the **Insured**, **Costs and Expenses** and will also indemnify the **Insured** for **Statutory Liability** resulting from the provision of **Information Technology Services** by the **Insured**, notwithstanding Exclusion *6.7 Employment Liability* and *6.8 Fines, Penalties and Damages* and *6.14 Pollution*, but only if **Keystone** are not legally prohibited from paying the **Statutory Liability** as follows:

4.27.1 for any civil offence; or

4.27.2 for a strict liability offence in connection with the discharge, dispersal, release or escape of **Pollutants**; or

4.27.3 for a strict liability offence in connection with a breach of workplace health and safety law or regulation.

4.28 **Keystone** is not liable to make payment under this **Policy** in connection with any **Statutory Liability** directly or indirectly based on, arising out of or attributable to the reckless or grossly negligent conduct, or any knowing or intentional breach or violation of law, by the **Insured** which is established through a judgment or other final adjudication adverse to the **Insured**, or any admission by an **Insured**, that such conduct did in fact occur.

4.29 **Keystone's** total liability under this Automatic Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments under this Automatic Extension will be part of and not in addition to the **Limit of Liability**.

5. Optional Extensions

The following Optional Extensions are all subject to the terms and conditions of this **Policy** unless expressly stated otherwise. The **Excess** and the **Limit of Indemnity** specified in the **Schedule** apply

to the Optional Extensions and the Optional Extensions shall not increase the **Limit of Indemnity** nor the **Aggregate Limit of Indemnity**.

Contractors, Consultants or Agents

5.1 The definition of **Employee** is extended to include independent contractors, consultants or agents while acting on the **Insured's** behalf in the provision of **Information Technology Services**.

Employment Practices Liability

5.2 **Keystone** will indemnify the **Insured** in respect of any **Employment Claim** against the **Insured** notwithstanding Exclusion *6.7.1 Employment Liability*.

5.3 The following additional terms apply for the purposes of this Optional Extension only:

5.3.1 **Insured** does not include the **Employee** making the **Claim** in respect of an **Employment Practice Breach**; and

5.3.2 Exclusion *6.7.2 Employment Liability* of this **Policy** will not apply to any **Claim** by an **Employee** in respect of mental anguish or emotional distress or disturbance arising out of an **Employment Practice Breach**; and

5.3.3 all claims which arise out of or are attributable to or are in any way connected with a single **Employment Practice Breach** shall constitute a single **Claim** for the purposes of this **Policy**. A single **Employment Practice Breach** means all respective **Employment Practice Breaches** which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated; and

5.3.4 **Keystone** will not indemnify the **Insured** for any **Claim** or **Inquiry** arising, indirectly or directly, or in any way connected with any **Employment Related Benefits** or a breach of an express obligation of an **Insured**:

5.3.4.1 to make payments (including the provision of non-cash benefits); or

5.3.4.2 pursuant to any procedural or notification requirements in the event of termination of employment, whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise;

5.3.5 **Keystone's** total liability under this Optional Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Indemnity**; and

5.3.6 a separate **Excess** will apply to each **Claim** under this Optional Extension as specified in the **Schedule**; and

5.3.7 the cover provided by this Optional Extension is specifically excess of any other applicable insurance. If any other insurance in respect of employment practices liability is provided by **Keystone** then the **Limit of Liability** for any and all **Claims** covered by this Optional Extension will be reduced by the **Limit of Liability** of such other insurance provided by **Keystone**.

Fidelity

5.4 **Keystone** will cover the **Insured** for any loss of money, negotiable instruments, stamps, bearer bonds or coupons, 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 **Fraudulent Act**, provided that:

5.4.1 such loss is discovered by the **Insured** during the **Period of Insurance** and is notified in writing to **Keystone** within the **Period of Insurance** and within twenty-eight (28) days of the date of discovery; and

5.4.2 there is no cover for any further losses suffered by the **Insured** after the **Insured** has become aware of any loss or any **Fraudulent Act**, or the date upon which a reasonable person would have had cause for suspicion of any loss or any **Fraudulent Act**; and

5.4.3 the **Insured** shall, at its own cost and expense, provide such documentation and information as is, in **Keystone's** opinion, necessary to substantiate the existence of and the amount of any such loss; and

5.4.4 a series of related, repeated or continuous **Fraudulent Acts** of any one **Employee** or group of **Employees** acting in collusion shall be treated as giving risk to a single loss for the purpose of applying the **Excess** for this Optional Extension; and

5.4.5 for the purpose of this Optional Extension the definition of **Employee** does not include any director or **Principal** of the named **Insured** nor any individual who owns or has a

beneficial or economic interest in more than 5% of the issued shares or net assets of the named **Insured**; and

5.4.6 **Keystone's** total liability under this Optional Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Indemnity**.

Principal's Previous Business

5.5 This **Policy** is extended to cover **Claims** made against any past and/or present **Principal** of the **Insured** and notified to **Keystone** during the **Period of Insurance** resulting from the conduct of Information Technology Services that are the same as the **Information Technology Services** whilst such **Principal** was a sole practitioner, a partner of a firm or a director of a company other than the **Insured** prior to becoming a **Principal** of the **Insured**.

United States of America Jurisdiction

5.6 Exclusion *6.13 Jurisdiction Limit* is deleted in its entirety.

5.7 **Keystone's** total liability under this Optional Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance**, and all payments will be part of and not in addition to the **Limit of Liability**, in relation to any action brought in a court of law or in respect of any judgement, award, payment or settlement within countries which operate under the laws of the United States of America (or to any order made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part).

6. Exclusions

Keystone will not indemnify the **Insured** for:

Asbestos

6.1 any **Claim** or **Inquiry** arising, indirectly or directly, or in any way connected with asbestos other than in respect to the provision of **Information Technology Services** for an asbestos related illness;

Assumed and Proportionate Liability

6.2 any **Claim** or **Inquiry**:

6.2.1 arising indirectly or directly from a contract where the **Insured** has limited their right to reduce, seek contribution from or apportion their liability to other concurrent wrongdoers under the proportionate liability legislation that applies in their State or Territory. This Exclusion only applies to the extent to which the **Insured** has assumed a liability that is greater than the liability the **Insured** would have if the proportionate liability legislation applied; and/or

6.2.2 arising indirectly or directly from a failure by the **Insured** to perform a contractual obligation and the **Claim** or **Inquiry** relates to the cost of organising another person to perform those services; and/or

6.2.3 arising indirectly or directly from any liability assumed by the **Insured** under a contract, deed or agreement which goes beyond the duty to use such skill and care as is usual in the exercise of **Information Technology Services**; and/or

6.2.4 arising indirectly or directly from any guarantee, warranty or indemnity granted by the **Insured**, or in any way connected with any liability for which the **Insured** have foregone, excluded or limited a right of recovery against any party;

Bodily Injury and Property Damage

6.3 any **Claim** or **Inquiry** arising, indirectly or directly, or in any way connected with:

6.3.1 death, bodily injury, illness or disease, emotional distress, emotional anguish or any mental, emotional or physical injury to any person; and/or

6.3.2 loss or destruction of or damage to property including the loss of use of property.

Component Parts

6.4 any **Information Technology Products** which are incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.

Directors and Officers

6.5 any **Claim** or **Inquiry** made against a **Principal** or **Employee** where such **Claim** or **Inquiry** is made solely by reason of the person holding the position, or having acted in the position, of

Director or Officer (as defined in the *Corporations Act 2001 (Cth)*) of the **Insured's** organisation or having acted in that capacity;

Dishonest or Wilful Acts

6.6 subject to Automatic Extension *4.6 Dishonesty*, any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, or arising out of or in connection with any actual or alleged:

- **6.6.1** dishonest, fraudulent or criminal acts, errors or omissions; or
- **6.6.2** wilful breach of any statute, contract, agreement or duty; or
- **6.6.3** any act, error or omission committed or omitted in reckless disregard,

of or by the **Insured**;

Employment Liability

6.7 any **Claim** or **Inquiry**:

- **6.7.1** in relation to, or for, an actual or alleged **Employment Practices Breach**; or
- **6.7.2** for breach of any obligation owed by the **Insured** in the **Insured's** capacity as employer to any **Employee** or in respect of which compensation is available under any Workers' Compensation Scheme or any similar legislation;

Fines, Penalties and Damages

6.8 subject to Automatic Extension *4.27 to 4.29 Statutory Liability*, any fines or penalties including but not limited to civil or criminal penalties and punitive, multiple, aggravated or exemplary damages;

Goods and Workmanship Exclusion

6.9 the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by the **Insured** or on the **Insured's** behalf; or

6.10 workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by the **Insured** or on the **Insured's** behalf, or from the **Insured's** supervision of such workmanship;

6.11 Exclusions *6.9* and *6.10* do not apply to the extent that the **Claim** arises directly from the provision of design, advice or specification services provided in the ordinary course of providing **Information Technology Services**;

Insolvency

6.12 any **Claim** or **Inquiry** arising from the administration, receivership, insolvency or bankruptcy of the **Insured**;

Jurisdiction Limit

6.13 any **Claim** arising from any legal proceeding brought in any court of the United States of America or their dominions and protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding or any **Inquiry** commenced, ordered, commissioned or conducted in the United States of America or their dominions and protectorates;

Pollution

6.14 any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, or in connection with or arising from the actual, alleged or threatened discharge, release, or escape of **Pollutants**;

Prior Reported or Known Circumstances

6.15 any:

- **6.15.1** **Claim** or **Inquiry** known by or received by the **Insured** prior to the **Period of Insurance**; or
- **6.15.2** **Claim**, **Known Circumstance** or **Inquiry** noted on the **Proposal** for the current **Period of Insurance** or any previous proposal; or
- **6.15.3** **Claim** or **Inquiry** reported, disclosed or notified, or which ought reasonably to have been reported, disclosed or notified, to **Keystone** or any other insurer prior to the **Period of Insurance** as being either:
  - **6.15.3.1** a **Claim** or an **Inquiry**; or
  - **6.15.3.2** facts, matters or circumstances which may give rise to a **Claim** and/or an **Inquiry**; or
  - **6.15.3.3** facts, matters or circumstances which may give rise to an allegation or a liability that is or may be the subject of a **Claim** or an **Inquiry**; or

6.15.3.4 a **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, or arising out of, or in connection with any **Known Circumstance**; or

6.15.3.5 **Inquiry** that was in progress, pending, commenced, ordered or commissioned prior to the **Period of Insurance**;

Radioactivity

6.16 any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, or in connection with or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

Refund of Professional Fees and Trading Debts

6.17 any **Claim** or **Inquiry**:

6.17.1 for refund of professional fees or charges (by way of damages or otherwise); or

6.17.2 for the **Costs and Expenses** incurred by the **Insured** or on the **Insured's** behalf in complying with any contractual obligations or making good any faulty product; or

6.17.3 arising directly or indirectly from the provision of any guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or

6.17.4 arising from a liability to pay trading debts, trade debts or the repayment of any loan;

Retroactive Date

6.18 any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, in connection with or arising from any:

6.18.1 event or occurrence prior to the **Retroactive Date**; or

6.18.2 acts, errors or omissions committed or alleged to have been committed prior to the **Retroactive Date**;

Related Parties

6.19 arising directly or indirectly from or in respect of any **Claim** brought by:

6.19.1 any **Insured**; or

6.19.2 any **Subsidiary**; or

6.19.3 any company or trust which is operated or controlled by the **Insured** or its nominees or trustees and in which an **Insured** has a direct or indirect financial interest; or

6.19.4 any trustee of a trust of which an **Insured** or a **Relative** of an **Insured** is a beneficiary; or

6.19.5 any company in which an **Insured** has or has held at least a 20% financial interest and has had or has board representation on that company; or

6.19.6 any **Relative** or any company owned or controlled by a **Relative**, unless the **Information Technology Services** that gave rise to the **Claim** were signed off by a **Principal** of the **Insured** who is a person not related to the **Relative**; or

6.19.7 any company, trust or person having a direct or indirect financial, executive or controlling interest in the **Insured**, unless such interest is less than 20%. This Exclusion shall not apply to:

6.19.7.1 a cross-claim or **Claim** brought by an **Insured** against another **Insured** for the purposes of contribution or indemnity where a claim is brought by a third party; or

6.19.7.2 a **Claim** brought by or on behalf of an **Employee** directly in relation to **Information Technology Services** provided by an **Insured** to that **Employee**;

Sanctions

6.20 any **Claim** or **Inquiry** that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America;

Terrorism

6.21 any **Claim** or **Inquiry** arising directly or indirectly from, or in connection with any act of **Terrorism**, or any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**;

War

6.22 any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, in connection with or arising from war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or

nationalisation or requisition or destruction of or damage to property by, or under the order of, any government or public or local authority.

7. Claims Conditions

Co-operation and Mitigation

7.1 The **Insured** must give **Keystone** such information and assistance as **Keystone** consider necessary to:

7.1.1 determine an appropriate course of action in relation to any **Claim** or **Inquiry**; and

7.1.2 identify any parties that the **Insured** may have rights against in connection with any **Claim**.

7.2 The **Insured** must take all reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a **Claim**.

7.3 Compliance with this Claims Condition will be at the **Insured's** own expense.

Discharge of Liability

7.4 **Keystone** may at any time pay to the **Insured** the amount of the **Limit of Liability** remaining under this **Policy**, or any lesser amount for which such **Claim** or **Claims** can be settled, less any sums already paid in the event of a **Claim** or series of **Claims** under this **Policy**. **Keystone** shall relinquish the conduct and control of and be under no further liability in connection with such **Claims** or **Costs and Expenses** incurred after the date of such relinquishment upon such payment being made.

Foreign Currency

7.5 Any payments made or **Costs and Expenses** incurred in a currency other than Australian dollars shall be converted to and paid in Australian dollars based upon the rate of exchange published by the Reserve Bank of Australia on the date that the payments were made or **Costs and Expenses** were incurred, or the preceding date should they be incurred on a weekend or public holiday.

Management of Claims

7.6 The **Insured** or the **Insured's** legal representatives must not:

7.6.1 take any action which is prejudicial to **Keystone's** interests; or

7.6.2 admit liability for or settle any **Claim**; or

7.6.3 incur any **Costs and Expenses** without **Keystone's** prior consent. **Keystone** accept no liability for any **Costs and Expenses** incurred without **Keystone's** prior consent.

7.7 **Keystone** will be entitled at any time, but not obligated, to take over and conduct in the **Insured's** name:

7.7.1 the defence of any suit, legal proceeding or action the subject of a **Claim**; or

7.7.2 the investigation of any **Claim**; or

7.7.3 the handling of any **Inquiry**; and may appoint legal representatives of **Keystone's** choice for these purposes.

7.8 Legal advisers retained by **Keystone** to act on the **Insured's** behalf for any **Claim** are at liberty to disclose to **Keystone** any information they receive in that capacity, wherever they obtain it from, including from the **Insured**. The **Insured**, by claiming under this **Policy**, authorise such legal advisers to disclose this information to **Keystone** and waive all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **Keystone**.

7.9 The legal advisers retained by **Keystone** to conduct the investigation, defence or settlement of any **Claim**, may provide advice to **Keystone** on any issue regarding **Keystone** liability to indemnify the **Insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **Keystone** and the **Insured**.

7.10 The **Insured** agrees that all communications between **Keystone** and the legal advisers retained by **Keystone** to act in the conduct of the investigation, defence or settlement of any **Claim** in relation to the **Insured's** entitlement to indemnity from **Keystone** are privileged between **Keystone** and the legal advisers and the **Insured** agrees that the **Insured** is not entitled, under any circumstances, to access or obtain any such communications.

7.11 The legal advisers retained by **Keystone** to conduct the investigation, defence or settlement of any **Claim** may cease acting on the **Insured's** behalf and may continue to act on **Keystone's** behalf in relation to any dispute between **Keystone** and the **Insured** with respect to the **Insured's** entitlement to indemnity from **Keystone** if any actual or apparent conflict arises between the interests of **Keystone** and the **Insured**.

7.12 **Keystone** have the discretion to negotiate the settlement of any **Claim**. If **Keystone** recommends the settlement of a **Claim** for a certain amount, and the **Claim** can be settled for that amount but the **Insured** refuse to agree to the settlement and decides to contest the **Claim**, then **Keystone** are only liable under this **Policy**:

7.12.1 for the recommended settlement amount; and

7.12.2 **Costs and Expenses** up to the date of the **Insured's** refusal to settle.

7.13 **Keystone** may allow the **Insured** to conduct the defence of any suit, legal proceeding or action the subject of a **Claim** if **Keystone** believe that the **Claim** will not exceed the **Excess**. If **Keystone** do this, the **Insured** is required to provide **Keystone** with regular progress reports and **Keystone** reserves the right to take over conduct of the defence of the **Claim** at any time.

Notification

7.14 This **Policy** applies only to **Claims** first made against the **Insured** during the **Period of Insurance** and notified to **Keystone** during the **Period of Insurance**.

7.15 A **Claim** is considered to be first made against the **Insured** when the **Insured**:

7.15.1 receives a demand for compensation or damages or any assertion of a financial right made by a third party in writing to the **Insured**; or

7.15.2 receives any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured** and claiming compensation, damages or other civil rights or remedies against the **Insured**.

7.16 The **Insured** must give immediate written notice or written notice as soon as practically possible to **Keystone**, via the **Insured's** intermediary, but in any event within the **Period of Insurance**, in the event of a **Claim** or **Inquiry** arising under this **Policy**.

Recoveries

7.17 Recoveries (whether effected by **Keystone** or by an **Insured**), less the cost of recovery, shall be distributed as follows:

7.17.1 first, to the **Insured** for the amount of **Claim** otherwise covered but in excess of the **Limit of Liability** less any applicable **Excess**; and

7.17.2 second, to **Keystone** for the amount paid to the **Insured** for covered **Claim**; and

7.17.3 third, to the **Insured** for the applicable **Excess**.

8. Conditions

Aggregation

8.1 Where more than one claim results from a single:

8.1.1 event or occurrence; or

8.1.2 act, error or omission,

those claims will be deemed by this **Policy** to be one **Claim** and **Keystone** will apply this Condition when determining the **Limit of Liability** available (including any sub-limits), and the **Excess** applicable to any **Claims**.

8.2 For the purposes of Condition *8.1 Aggregation*:

8.2.1 all causally connected acts, errors or omissions shall jointly constitute a single act, error or omission; and

8.2.2 a continuous or repeated exposure to substantially the same general conditions will constitute a single event or occurrence.

Assignment

8.3 This **Policy** cannot be assigned by the **Insured**.

Authorisation

8.4 The **Principal Insured** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Insured** for all purposes under this **Policy**, subject to *8.30 Severability and Non-Imputation*.

Cancellation

8.5 **Keystone** may only cancel this **Policy** pursuant to the *Insurance Contracts Act 1984 (Cth)*.

8.6 The **Principal Insured** may cancel this **Policy** at any time by giving written notice to **Keystone**.

8.7 **Keystone** may retain the pro rata proportion of the **Premium**. However, in the event of the notification of a **Claim** or **Inquiry** which is covered under this **Policy**, or a notification pursuant to the *Insurance Contracts Act 1984 (Cth)* being given by an **Insured** prior to cancellation, the **Premium** shall be regarded as fully earned and may be retained by **Keystone**.

Consideration

8.8 The indemnity provided by **Keystone** under this **Policy** is in consideration of the payment of the **Premium**.

8.9 The **Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Keystone** by the due date. The due date is on or before thirty (30) days after the inception date of the **Period of Insurance** or such other time that **Keystone** agrees in writing. **Keystone** is entitled to cancel this **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)* if the **Insured** fails to pay the **Premium** by the due date.

Construction and Interpretation

8.10 Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.

8.11 Words denoting the singular include the plural and vice versa except where the context otherwise requires.

Deregistration

8.12 The **Insured** must notify **Keystone** immediately in the event that the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the **Insured's** profession is cancelled, suspended or terminated, or has conditions imposed during the **Period of Insurance**. Any **Claims** arising from the provision of **Information Technology Services** after the date of cancellation, suspension or termination are excluded from indemnity under this **Policy**. However, this Condition does not apply if the suspension relates purely to the late payment of registration fees.

Endorsements

8.13 An **Endorsement** does not affect or increase the **Limit of Liability**, the **Maximum Aggregate Limit of Liability** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

Enforceability

8.14 This **Policy** must have a **Schedule** attached to it which has been signed by an authorised officer of **Keystone** to be enforceable.

Excess

8.15 The **Insured** is liable to pay the **Excess** for each **Claim**, **Inquiry** and loss of **Documents** specified in the **Schedule**.

8.16 The **Excess** is inclusive of **Costs and Expenses** and the **Insured** is liable to pay **Costs and Expenses** as they are incurred up to the amount of the **Excess**.

8.17 The **Excess** is net of any input tax credit which the **Insured** is or may be entitled to receive or claim under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* when calculating the **Excess** which is payable by the **Insured** for the acquisition of goods, services or other supplies including **Costs and Expenses**.

8.18 The **Insured** shall, if directed by **Keystone**, pay to **Keystone** (or as directed by **Keystone**), the **Excess** within seven (7) working days in the event of a **Claim** by the **Insured** under this **Policy**. Any delay, failure or refusal by the **Insured** to pay the **Excess** will entitle **Keystone** to deduct

such amount from any amount(s) required to settle any **Claim** or judgment, order or any other payment to be made by **Keystone** under this **Policy**. If a failure or refusal to grant access to monies for any **Excess** results in a failure of a settlement or an increase in **Costs and Expenses**, **Keystone's** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Costs and Expenses** incurred with **Keystone's** written consent up to the date of such failure or refusal, less the **Excess**.

8.19 The **Insured** shall, within seven (7) working days of receipt of **Keystone's** written request, reimburse **Keystone** for a payment where **Keystone** have elected to pay all or part of the **Excess** in respect of any **Claim**.

Goods and Services Tax (GST)

8.20 **Keystone** will charge the **Insured** an amount on account of GST as part of the **Premium**. The **Insured** must inform **Keystone** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform **Keystone** of its entitlement or correct entitlement to an input tax credit. **Keystone's** liability to the **Insured** will be calculated taking into account any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition despite the other terms of this **Policy**. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

Governing Law

8.21 This **Policy** will be governed in accordance with the law of the State or Territory of Australia in which this **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

Limit of Liability and Maximum Aggregate Limit of Liability

8.22 **Keystone's** maximum aggregate liability under this **Policy** for all **Claims**, **Inquiries** and/or claims under any Extension or **Endorsement** during the **Period of Insurance** will not exceed the **Maximum Aggregate Limit of Liability**.

8.23 A sub-limit shall form part of and erode the **Limit of Liability** where that sub-limit is specified in the **Schedule**, or this **Policy**.

8.24 **Keystone** are not obliged to defend, or continue to defend any **Claim** or to pay or continue to pay **Costs and Expenses** after the **Limit of Liability** or the **Maximum Aggregate Limit of Liability** has been eroded.

Costs in Addition

8.25 This **Policy** provides costs in addition up to 30% of the **Limit of Liability** for any one **Claim** and in the aggregate. For example, if this **Policy** has a **Limit of Liability** of $1,000,000 any one **Claim** and in the aggregate, the maximum liability of **Keystone** is $1,300,000 inclusive of all **Costs and Expenses**. If this **Policy** has a **Limit of Liability** of $1,000,000 any one **Claim** and $2,000,000 in the aggregate, the maximum liability of **Keystone** is $1,300,000 any one **Claim** and $2,600,000 in the aggregate inclusive of all **Costs and Expenses**.

Material Change

8.26 The **Insured** must notify **Keystone** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **Keystone** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on **Keystone's** assessment of any change in the risk insured by this **Policy**. A material change in the risk includes, without limitation:

- **8.26.1** activities that are materially different from those declared in the **Proposal**; or
- **8.26.2** activities outside the normal activities of **Information Technology Services**; or
- **8.26.3** the **Insured** being insolvent; or
- **8.26.4** any loss of or conditions imposed upon any licence or other authority required by the **Insured** to conduct **Information Technology Services**.

8.27 **Keystone** may at its election, instead of cancelling or avoiding this **Policy**, give notice in writing to the **Insured** that any **Claim** or **Inquiry** which has arisen or may arise which is related to such facts, activities or circumstances shall be excluded from indemnity under this **Policy** in the event of **Keystone** being at any time entitled to cancel or avoid this **Policy** because of the **Insured** failing to give notice in accordance with Condition *8.26 Material Change*.

Other Insurance

8.28 The **Insured** shall promptly give to **Keystone** full details of any other insurance, including the identity of the insurer and the policy number, and such further information as **Keystone** may reasonably require if at the time any **Claim** arises under this **Policy** there is any other insurance in force covering the same liability.

Proportionate Liability

8.29 This **Policy** will only indemnify the **Insured** for the **Insured's** proportionate liability for any **Claim**.

Severability and Non-Imputation

8.30 Where this **Policy** insures more than one party, any failure on the part of any of the parties shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

8.30.1 comply with the duty of disclosure under the *Insurance Contracts Act 1984 (Cth)*;

8.30.2 comply with any obligation under this **Policy** (other than the obligation to pay premium);

8.30.3 refrain from conduct which is dishonest, fraudulent, criminal or malicious;

8.30.4 be entirely innocent of and have had no prior knowledge of any such conduct as described in *8.30.3*; and

8.30.5 as soon as practicable after becoming aware of any such conduct as described in *8.30.3*, advise **Keystone** in writing of all its relevant circumstances.

Subrogation

8.31 **Keystone** will become subrogated to all rights and remedies that the **Insured** may have against any party in relation to a **Claim** where **Keystone** have paid that **Claim** under this **Policy**. The **Insured** must assist **Keystone** (including giving evidence at any civil hearing) and provide such information and documentation (including signed statements) as **Keystone** reasonably require in exercising such rights at **Keystone's** request, and without charge.

8.32 **Keystone** agree not to exercise the **Insured's** rights of subrogation against any **Principal** or **Employee** of the **Insured's** notwithstanding Condition *8.30 Severability and Non-Imputation*, if any payment is made or may be made under this **Policy**, unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **Principal** or **Employee**.

Variation of this Policy

8.33 No variation of this **Policy** will be effective, unless made by **Endorsement**.

KEYSTONE

Important Information

This Policy is issued by:

Keystone Underwriting Pty Ltd ABN 78 601 944 764 (Keystone)

Keystone Underwriting Pty Ltd is a Corporate Authorised Representative (No. 000468712) of:

Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFS License No: 518244

Who is the Insurer?
Certain Underwriters at Lloyd's ("Underwriters") will be providing the financial service. Keystone is authorised to quote, bind and issue Certificates of Insurance under a Binding Authority Agreement (Binder) granted to Keystone by those Underwriters. Keystone will provide details of the syndicate numbers and the proportions underwritten by them on request.

General Insurance Code of Practice
Lloyd's supports the General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry.

What makes up the Insurance Contract?
This contract of insurance is made up of the Schedule, this Policy and any Endorsements that Keystone issues when an application is accepted or an existing Policy is renewed or amended.

Significant Features, Benefits and Exclusions
This Policy provides many significant features and benefits, subject to Conditions and Exclusions. Exclusions apply to this Policy and all of them are important. It is important that this Policy is read carefully to be aware of and understand the extent of cover that it offers. It will give full details of the Exclusions.

Significant Risks
The Insured should make sure that the sum insured and the limits to be purchased will be sufficient. All the terms and conditions contained in this Policy need to be understood.

Claims Made Policy
This Policy is issued by Keystone on a claims made and notified basis. This means that it only covers claims first made against an Insured during the Period of Insurance and notified to Keystone in writing during the Period of Insurance. The Policy does not provide cover for any claims made against an Insured during the Period of Insurance if at any time prior to the Period of Insurance starting, an Insured was aware of facts which might give rise to those claims being made against them.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where an Insured gives notice in writing to an insurer during the Period of Insurance of facts that might give rise to a claim against the Insured, the insurer cannot refuse to pay a claim which arises out of those facts, by reason only that the claim is made after the Period of Insurance has expired.

Retroactive Liability
This Policy is limited by a Retroactive Date. The Policy does not cover any liability arising from an Insured's conduct prior to the Retroactive Date.

Alteration to Risk and Deregistration
This Policy requires an Insured to notify Keystone within thirty (30) days of any material change to the business, or in the event of insolvency or bankruptcy. This Policy requires an Insured to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of an Insured's statutory registration. Claims arising from conduct which occurs subsequent to the cancellation, suspension or termination of the Insured's statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the Insured's profession are excluded from indemnity under this Policy. However, this condition does not apply if the suspension relates purely to the late payment of registration fees.

Doctrine of Utmost Good Faith
Every insurance contract is subject to this doctrine which requires the parties to the contract to act toward each other with the utmost good faith. Failure to do so may prejudice any claims and/or the continuation of the insurance contract.

Duty of Disclosure
The Insured has a duty to tell Keystone anything they know, or could reasonably be expected to know, may affect Keystone's decision to provide cover and on what terms, before entering into an insurance contract. This duty continues until Keystone agree to provide insurance. The same duty applies before renewal, extension, variance or reinstatement of an insurance contract.

Limits of Disclosure
The Insured does not have to disclose to Keystone any matter:

(a) that diminishes the risk to be undertaken by Keystone; or

(b) that is of common knowledge; or

(c) that Keystone knows or, in the ordinary course of Keystone's business, ought to know; or

(d) for which Keystone has given a waiver.

Non-Disclosure
Keystone may cancel the Policy or reduce the amount paid to the Insured if a claim is made, or both if the Insured does not tell Keystone anything they are required to. Keystone may refuse to pay a claim and treat the contract as if it never existed if the Insured's failure to tell Keystone is fraudulent.

Change of Circumstances
The terms and conditions of this Policy will be based on information the Insured provided to Keystone. It is essential Keystone are advised of any material change that occurs to this information prior to the inception of this Policy. Failure to do so by the Insured may prejudice any subsequent claims under the Policy and/or jeopardise the continuation of the insurance contract.

KEYSTONE

Buying Insurance

Set out below are important matters that apply to the initial enquiry, buying of insurance, and renewal of cover. Defined terms are the same as in the Policy.

Information that Keystone ask
Keystone will only ask for and consider relevant information when assessing the Insured's application for cover.

Assessing Applications
The Insured will have access to information that Keystone has relied on in assessing their application and an opportunity to correct any mistakes or inaccuracies. Keystone may decline to release information in special circumstances, but will not do so unreasonably. Keystone will give reasons in these circumstances, and the Insured will have the right to request Keystone to review the decision through Keystone's complaints handling procedures. Keystone will provide reasons in writing upon request.

Mistakes
Keystone will immediately initiate action to correct an error or mistake in assessing the Insured's application for cover where it is identified.

Misrepresentation
Keystone's sales process will be conducted in a fair, honest and transparent manner.

Declining Cover
If Keystone cannot provide insurance cover, Keystone will:

(a) give reasons; and

(b) refer the entity/person seeking insurance to another insurer, AFCA or NIBA, for information about alternative insurance options (unless they already have someone acting on their behalf).

Keystone will make available information about Keystone's complaints handling procedures if the entity/person is unhappy with Keystone's decision.

Policy Information
Information about Keystone's policy wordings will be available when the Insured buy insurance from Keystone as well as on request. They will also be available on Keystone's website at www.keystoneunderwriting.com.au.

Subrogation
The Insured may prejudice their rights regarding a claim if, without prior approval from Keystone, the Insured makes an agreement with a third party that would prevent Keystone from recovering any applicable loss (in whole or in part) from that, or another party.

This Policy contains provisions that have the effect of excluding or limiting Keystone's liability for a claim under this Policy if you have entered into any agreement that excludes, limits or delays the Insured's right to recover damages from another party in respect of such claim.

Cost of Policy
The cost of this Policy is made up of premium plus any applicable policy fees, government taxes and charges. Keystone may cancel this Policy if the Insured fails to pay the total premium due.

Deductibles
The Insured may be required to pay a deductible or excess if a claim is made under this Policy. Details of applicable deductibles or excess are provided in the Schedule. This Policy sets out the terms relating to the payment of deductibles or excesses.

Taxation
All taxes and charges are shown as separate items (e.g. fire and emergency services levy, stamp duty depending upon location and GST).

Cooling-off Period
The Insured has the right to cancel this Policy with Keystone within 14 days of the date that the Policy incepted, unless a claim is made. Keystone will refund the full amount of the premium less any duties or taxes payable if this cancellation occurs during the cooling-off period. This Policy will be terminated from the date Keystone receive the request to cancel.

Making a Claim
Benefits are payable if the Insured suffers a loss that is covered under this Policy during the Period of Insurance, except if an Exclusion or Condition applies. The Insured must immediately notify Keystone or their insurance adviser if there is a loss under this Policy.

Cancelling the Policy Before the Due Date
The Insured may cancel this Policy at any time by notifying us in writing, detailing the date that the cancellation will take effect. Keystone will refund any unearned premium to the Insured or their insurance adviser within 15 working days after the date of cancellation. Unearned premium will be computed pro rata for the unexpired term of this Policy, unless agreed in advance through the insurance adviser and set out in this Policy.

Privacy
Keystone are committed to safeguarding and protecting the Insured's privacy. Keystone is bound by the provisions of the *Privacy Act 1988* which sets out the standards to meet in the collection, use and disclosure of personal information.

The Act defines "personal information" as "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion".

Purpose of Collection
Keystone will only use personal information the Insured provides to quote on and insure risks and matters incidental thereto, including investigating and managing claims.

It may be necessary for Keystone to provide the Insured's personal information to others, such as other insurers or reinsurers, claims investigators, lawyers and other professionals, and government bodies. Keystone will not under any circumstances trade, rent or sell the information.

Keystone cannot properly quote insurance and cannot insure the Insured if they do not provide Keystone with complete, accurate and up-to-date information. If the Insured provide Keystone with personal information about anyone else, Keystone will rely on the Insured to have told them that their information will be provided to Keystone, to whom Keystone may provide it, the purposes for which Keystone will use it and that they can access it. Keystone relies on the Insured to have obtained their consent on these matters if the information is sensitive.

Access to Information
The Insured can check the personal information Keystone holds about them at any time. Requests for access can be made in writing to:

The Privacy Officer
Keystone Underwriting Australia Pty Ltd
17/296 Bay Road
Cheltenham, VIC 3192

Keystone will keep the Insured informed of any delays in responding to the Insured's request throughout the process.

KEYSTONE

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au.

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Keystone Underwriting Australia Pty Ltd in the first instance:
The Complaints Officer
Keystone Underwriting Australia Pty Ltd
17/296 Bay Road
Cheltenham, VIC 3192
Phone: 1300 946 530
Email: complaints@ksua.com.au

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:
Lloyd's Australia Limited
Email: idraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:
Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:
Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000
who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

Claims Department - Keystone Underwriting Australia Pty Ltd
Telephone: 1300 946 530
Email: claims@ksua.com.au