



iTech Information Technology Policy Wording

Section 1: PREAMBLE

In consideration of the payment of the premium to US, WE shall provide the cover described in the POLICY, subject to its terms and conditions, for the INSURANCE PERIOD.

SECTION A: PROFESSIONAL INDEMNITY

Section 2: INSURING CLAUSES

- 2.1 WE agree to indemnify the INSURED up to the INDEMNITY LIMIT for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD for any act, error or omission by the INSURED in the provision of its INFORMATION TECHNOLOGY in the course of its BUSINESS.
- 2.2 WE also agree to pay, in addition to the INDEMNITY LIMIT, DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent. Provided that, if to dispose of or settle a CLAIM covered under this POLICY, compensation is payable in excess of the INDEMNITY LIMIT, OUR liability in respect of DEFENCE COSTS is limited to that proportion of such DEFENCE COSTS as the INDEMNITY LIMIT bears to the total compensation payable to dispose of or settle the CLAIM. Further WE will not pay any DEFENCE COSTS or other costs and expenses that are incurred after we have paid an amount or amounts equal to the INDEMNITY LIMIT. If any Extension to this POLICY provides a sub limit such a sub limit is inclusive of DEFENCE COSTS unless otherwise stated expressly.
- 2.3 The POLICY shall only provide cover in respect of acts, errors or omissions committed or alleged to have been committed after the RETROACTIVE DATE.

Section 3: AUTOMATIC EXTENSIONS (Applicable to Section A only)

The automatic extensions are subject to the Insuring Clauses in Section 2 above and all other applicable POLICY terms and conditions, including but not limited to the INDEMNITY LIMIT for this Section A.

3.1 Attendance at Inquiries

WE agree to provide cover for any legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. We will only do this if:

- (a) the INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- (b) OUR consent is obtained before such costs are incurred, and
- (c) the INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- (d) the conduct which is the subject of the INQUIRY occurred on or after the RETROACTIVE DATE, and
- (e) the INSURED's attendance is required because of the provision of the INSURED's INFORMATION TECHNOLOGY, and
- (f) at our option, WE can nominate the legal advisers to represent the INSURED.

The cover provided under this extension is sub-limited to \$250,000 any one INQUIRY and in the aggregate for all INQUIRIES inclusive of all DEFENCE COSTS and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT for this Section A. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

3.2 Continuous Cover

Notwithstanding the Prior Knowledge Clause 8.13 (a) and (b), WE agree to provide cover in respect of any CLAIM made in the INSURANCE PERIOD where the INSURED:

- (a) first became aware, prior to the INSURANCE PERIOD, that a CLAIM might or could arise from facts or circumstances known to it; and
- (b) had not notified US of such facts or circumstances prior to the INSURANCE PERIOD.

Provided that:

- (i) WE were the professional indemnity liability insurer of the INSURED when the INSURED first became aware of such facts and circumstances; and
- (ii) WE have continued, without interruption, to be the INSURED's professional indemnity insurer up until this POLICY came into effect; and
- (iii) There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- (iv) WE have the discretion to apply either the terms and conditions of the POLICY on foot when the INSURED first became aware of the facts and circumstances, including but not limited to the INDEMNITY LIMIT and DEDUCTIBLE, or the terms and conditions of this POLICY;
- (v) The INSURED agrees to only make a claim under one professional indemnity POLICY issued by US.

For the purpose of this Extension only, the definition of WE/US/OUR in clause 7.31 of this POLICY also includes the Underwriter(s) for which WE were the agent on any previous POLICY issued by US as such Underwriter's agent to the INSURED. Subject to the terms of this extension and the terms of the POLICY, the intention of this Extension is to provide continuous cover to the INSURED notwithstanding any change in the identity of the Underwriters for which WE presently act, or have previously acted, as agent.

3.3 Court Attendance Costs

WE agree to provide cover for any court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally compelled to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$250 per day for EMPLOYEES and \$500 per day for those other persons. No DEDUCTIBLE applies.

3.4 Defamation

WE agree to provide cover for any CLAIM against the INSURED which results from the INSURED making any unintentional defamatory statement in the conduct of the BUSINESS.

3.5 Defence Costs for Breach of Contract

WE agree to provide cover for any legal costs and expenses incurred with OUR prior consent for defending actions against the INSURED where the INSURED has contracted to indemnify a client due to an act, error or omission by the INSURED in the provision of the INFORMATION TECHNOLOGY in the course of the BUSINESS. The cover provided under this extension is sub-limited to \$100,000 any one action and in the aggregate for all actions inclusive of all DEFENCE COSTS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. This Extension is notwithstanding Exclusion 8.2 ((a) Assumed Liability).

3.6 Emergency Defence Costs

It is agreed that notwithstanding any provision in the POLICY to the contrary, if it is not possible for the INSURED to obtain OUR consent prior to incurring DEFENCE COSTS, WE will waive prior consent so long as OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred and provided that:

- (a) WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE, and
- (b) If WE subsequently refuse to pay under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to their respective rights and interests.

The sub limit of liability for all such payments under this Extension is \$100,000 in the aggregate for all CLAIMS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

3.7 **Fair Trading Act 1986**

WE agree to provide cover for any CLAIM For compensation made against the INSURED alleging breach of sections 9-14 of the Fair Trading Act 1986 (or any similar legislation that may apply in the states, territories or countries of the jurisdiction specified in the Schedule.)

3.8 **Fidelity**

WE agree to provide cover in respect of any CLAIM against, or loss discovered by, the INSURED resulting from:

- (a) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to the INSURED or for which the INSURED is legally liable; and/or
- (b) any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the INSURED or for which the INSURED is legally liable ("fraudulent transaction"),

where such loss is sustained or fraudulent transaction occurs in consequence of any dishonest, fraudulent, malicious or reckless act or omission of any INSURED, provided always that:

- (i) Such CLAIM is first made against the INSURED or loss or fraudulent transaction is first discovered by the INSURED during the INSURANCE PERIOD and is notified in writing to US within 28 days after such discovery and where the INSURED must bear any costs or expenses to substantiate the loss or fraudulent transaction;
- (ii) We shall not be liable for any CLAIM based on or loss sustained in respect of any fraudulent transaction which occurs in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the INSURED concerned; nor will we be liable to indemnify any INSURED committing or condoning any dishonest or fraudulent conduct.

The cover provided under this extension is sub-limited to \$50,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses inclusive of all DEFENCE COSTS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE will apply to each CLAIM and loss under this extension.

3.9 **Former Principals**

WE agree to provide cover for any CLAIM against any former principal, partner, director or EMPLOYEE of the INSURED in respect of the provision of the INSURED's INFORMATION TECHNOLOGY.

3.10 **Fraud and Dishonesty**

WE agree to provide cover for any CLAIM which would otherwise be excluded because of Fraud and Dishonesty in Exclusion 8.8 of the POLICY, provided that WE will not provide cover in respect of any:

- (a) person committing or condoning any act, omission or breach excluded by Exclusion 8.8 of the POLICY.
- (b) loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property.

3.11 **Heirs, Estates and Legal Representatives**

WE agree to provide cover for any estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED for claims resulting from the provision by such INSURED of INFORMATION TECHNOLOGY in the course of the BUSINESS.

3.12 **Intellectual Property**

WE agree to provide cover for any CLAIM made against the INSURED for any infringement of copyright, trademarks, registered designs, circuit layout, rights, patents or any passing off, plagiarism or breach of confidentiality.

3.13 **Internet Liability**

WE agree to provide cover for any CLAIM made against the INSURED alleging unintentional:

- (a) infringement or unauthorised use of intellectual property rights or alleged intellectual property rights;
- (b) defamation;
- (c) unauthorised use of names (including domain names), trade names, trade address, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or program materials;
- (d) passing off;
- (e) breach of confidentiality or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 1993;
- (f) misuse of information which is either confidential or subject to statutory restrictions on use;
- (g) transmission of any computer virus or programme or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly;
- (h) belittling of a product or work (whether completed or not) of others; or
- (i) unauthorised taking for use of any advertising idea, material, slogan, style or title of others,

committed or alleged to have been committed by the INSURED in the provision of its Website, use of the Internet, electronic mail or any electronic network.

Provided always that WE shall not be liable respect of any CLAIM arising out of or connected with any chat rooms, electronic bulletin boards or electronic open forum debates or social networking websites.

The cover provided under this extension is sub-limited to \$250,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses inclusive of all DEFENCE COSTS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE will apply to each CLAIM and loss under this extension.

3.14 **Joint Venture Liability**

WE agree to provide cover for any CLAIM against the INSURED in respect of the provision of INFORMATION TECHNOLOGY in the course of the BUSINESS where the INSURED is engaged as a joint venturer.

WE will not cover any joint venture partner(s).

3.15 **Licensee Intellectual Property Rights**

WE agree to provide cover for any CLAIM which would otherwise be excluded by reason of Exclusion 8.2 (Assumed Liability) in respect of any CLAIM made against the INSURED by a Licensee of the INSURED under any warranty or indemnity given by the INSURED in respect of the INSURED'S ownership or ability to licence any intellectual property rights.

Lost Data

WE agree to provide cover for any CLAIM made against the INSURED arising from the LOST DATA, which has been:

- (a) destroyed, erased, damaged or corrupted; or
- (b) lost or mislaid and, after diligent search, cannot be found,

provided always that the discovery of such loss of DATA occurred during the Period of Insurance.

Previous Business

WE agree to provide cover to any principal, partner or director of the INSURED for CLAIMS resulting from professional services they performed prior to joining the INSURED.

This extension will only apply if:

- (a) the professional services were performed in the same profession as the INSURED's BUSINESS; and
- (b) there were no more than 10 partners or directors in the past business in which the principal, partner or director practised; and
- (c) the principal, partner or director of the INSURED does not have the benefit of cover under any other insurance or indemnity.

The retroactive date for this Extension is limited to the commencement date of the past business in which the principal, partner or director practised.

Public Relations

WE agree to provide cover for any PUBLIC RELATIONS EXPENSES incurred by the INSURED in connection with an INCIDENT in order to prevent or minimise the risk of a CLAIM which would be covered under the POLICY, or in connection with an INCIDENT that results in a CLAIM covered under the POLICY.

The INSURED's entitlement to this cover is conditional upon the INSURED providing US with full written details of the INCIDENT no later than 30 days after the INSURED first becomes aware of the INCIDENT. The INCIDENT must occur and be reported during the INSURANCE PERIOD. The INCIDENT must occur outside of the USA/Canada.

The cover provided under this extension is sub-limited to \$50,000 any one INCIDENT and in the aggregate for all INCIDENTS inclusive of all DEFENCE COSTS. A separate DEDUCTIBLE will apply to each INCIDENT under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.3.4

Reinstatement of INDEMNITY LIMIT

WE agree to provide cover in respect of any CLAIM(S) covered by Insuring Clause 2.1 which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM or CLAIMS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to the INDEMNITY LIMIT, inclusive of DEFENCE COSTS and any other costs and expenses, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT. Further, this Extension does not apply until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies. This Extension does not apply to any cover available under this POLICY in respect of the United States of America or the Dominion of Canada or their respective territories or protectorates, whether under Optional Extension 5.1 or otherwise.

Run-off Cover Insured Entity or Subsidiary (Former Subsidiary)

WE agree to provide cover for any CLAIM against the INSURED in respect of the provision of INFORMATION TECHNOLOGY by an INSURED entity or SUBSIDIARY in the course of the INSURED's BUSINESS that ceased or ceases to be an INSURED entity or SUBSIDIARY either before or during the INSURANCE PERIOD.

SECTION B PUBLIC LIABILITY

Section 4 INSURING CLAUSES

4.1 WE agree to indemnify the INSURED for any amount the INSURED becomes legally liable to pay in respect of CLAIMS for compensation for PERSONAL INJURY or PROPERTY DAMAGE arising out of an OCCURRENCE in the INSURANCE PERIOD in connection with the INSURED's BUSINESS.

4.2 Defence Costs and Expenses

In addition to the INDEMNITY LIMIT WE will pay in respect of a CLAIM covered under this Section of the POLICY, all:

- (a) DEFENCE COSTS incurred by US;
- (b) Costs awarded against the INSURED and all interest accruing after judgement until WE have paid, tendered or deposited in court that part of any judgement which does not exceed the INDEMNITY LIMIT;
- (c) Reasonable costs and expenses, other than loss of earnings, incurred by the INSURED with OUR prior written consent; and
- (d) Costs and expenses incurred by the INSURED for rendering first aid to others at the time of any PERSONAL INJURY;

Provided that:

- (i) If to dispose of or settle a CLAIM covered under this section of the POLICY, compensation is payable in excess of the INDEMNITY LIMIT, OUR liability in respect of DEFENCE COSTS and costs and expenses under this clause will be limited to that proportion of such DEFENCE COSTS and costs and expenses as the INDEMNITY LIMIT bears to the total compensation payable to dispose of or settle the CLAIM;
- (ii) WE will not pay for any DEFENCE COSTS or costs or expenses that are incurred after WE have paid or agreed to pay an amount equal to the INDEMNITY LIMIT; and
- (iii) In relation to any CLAIM made or actions instituted within the United States of America or the Dominion of Canada or their territories or protectorates, OUR liability to pay any DEFENCE COSTS or costs or expenses detailed above shall be included in the INDEMNITY LIMIT, and not in addition to the INDEMNITY LIMIT.

4.3 Tenants Liability

WE agree to indemnify any lessor with whom the INSURED has entered into an agreement for the rental or lease of premises (not belonging to the INSURED) from which the INSURED conducts its BUSINESS, provided always that no wider cover shall be afforded to the lessor than would have been provided hereunder to the INSURED if the INSURED had been held legally liable for the same PERSONAL INJURY or PROPERTY DAMAGE and only where that liability arises out of the INSURED's use of such premises in the carrying on of its BUSINESS. Exclusion 8.2 (b) (Assumed Liability) shall not apply to any cover provided under this Extension.

Section 5: OPTIONAL EXTENSIONS

The optional extensions are subject to Insuring Clauses 2.1 and 4.1 and all other applicable POLICY terms and conditions, including but not limited to the INDEMNITY LIMIT for Sections A and B.

5.1 USA and Canada Cover (Sections A and B)

WE agree to provide cover which would otherwise be limited by Conditions 10.7 or 10.12 in respect of any CLAIM made against the INSURED arising from any act, error, omission or OCCURRENCE anywhere in the world provided always that for any CLAIM:

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) relating to the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, the United States of America or the Dominion of Canada or their territories or protectorates,

the respective INDEMNITY LIMITS under each of Section A and Section B in respect of this Optional Extension are inclusive of all DEFENCE COSTS and other expenses of any kind. The DEDUCTIBLE(S) for the cover under this Extension for each of Sections A and B are inclusive of DEFENCE COSTS and other covered costs and expenses.

This Optional Extension, if operative, shall apply notwithstanding any other provision of the POLICY to the contrary. Automatic Extension 3.19 Reinstatement of INDEMNITY LIMIT and the terms of the covers for Attendance at Inquiries (clause 3.1) and PUBLIC RELATIONS EXPENSES (clause 3.18) relating to the United States of America and the Dominion of Canada and their respective territories or protectorates have no application to the cover provided under this Extension.

5.2 Consultants, Subcontractors and Agents (Section B only)

WE agree to provide cover in accordance with clause 4.1 for any claim against any consultant, sub contractor or agent named in the Schedule involved in the provision of INFORMATION TECHNOLOGY for and on behalf of the INSURED in the course of the BUSINESS.

For the purpose of this Optional Extension only all terms, conditions and exclusions of the POLICY apply under this Extension as if the consultant, subcontractor or agent were an INSURED.

5.3 Employment Practices Liability (Section A only)

Notwithstanding Exclusion 8.10 and subject to the terms of this Extension and the POLICY except as expressly amended herein, WE agree to provide cover in respect of any CLAIM against the INSURED resulting from an EMPLOYMENT PRACTICE BREACH.

For the purposes of this Extension only, the following amendments to the POLICY and additional terms apply:

1. CLAIM means:
 - (a) a civil proceeding brought by an EMPLOYEE for recovery of compensation or damages; or
 - (b) any suit, proceeding or written demand by an EMPLOYEE for monetary damages.
2. EMPLOYEE shall include a prospective employee of the INSURED.
3. 'INSURED' means the entity/ies referred to in clause 7.15(a) of the POLICY and does not include the EMPLOYEE making the CLAIM in respect of an EMPLOYMENT PRACTICE BREACH.
4. Exclusion 8.10 of the POLICY shall not apply to any CLAIM by an EMPLOYEE in respect of mental anguish or emotional distress or disturbance alleging an EMPLOYMENT PRACTICE BREACH.
5. BENEFITS means any amount payable to a beneficiary of a superannuation fund by the Trustee under the rules governing the fund.
6. EMPLOYMENT PRACTICE BREACH means any breach of duty or breach of trust owed by the INSURED in relation to any of the following employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the INSURED and its past, present or prospective EMPLOYEES.
7. EMPLOYMENT-RELATED BENEFITS includes but is not limited to:
 - (a) 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;

- (b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
- (c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- (d) severance or redundancy payments or entitlements;
- (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- (f) 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);
- (g) 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;
- (h) 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.

8. INDUSTRIAL INSTRUMENTS means

- (a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
- (b) any other collective agreement;

which regulates the terms and conditions of employment.

9. 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.

10. WE will not cover the INSURED, including for DEFENCE COSTS, in respect of any CLAIM for an EMPLOYMENT PRACTICE BREACH for, arising from or directly or indirectly attributable to or in consequence of any BENEFITS or EMPLOYMENT-RELATED BENEFITS or a breach of an express obligation of an INSURED:

- (a) to make payments (including the provision of non cash benefits); or
- (b) 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.

11. For the purpose of the cover in this Extension, Extension 3.18 (Public Relations) in the POLICY is deleted and is of no effect.

12. The cover provided under this Extension is sub-limited to \$500,000 any one CLAIM and in the aggregate for all CLAIMS, inclusive of all DEFENCE COSTS, and the DEDUCTIBLE in respect to each CLAIM under this extension is \$10,000. The sub-limit is part of and not in addition to the INDEMNITY LIMIT.

13. The cover provided by this Extension is specifically excess of any other applicable insurance. If any other insurance in respect of Employment Practices Liability is provided by US then the INDEMNITY LIMIT for any and all CLAIMS covered by this Extension shall be reduced by the INDEMNITY LIMIT of such other insurance provided by US.

Section 6: INTERPRETATION

- 6.1 In the POLICY:
- (a) Person includes individuals, partnerships, bodies corporate and associations.
 - (b) The singular includes the plural and the masculine includes the feminine.
 - (c) The headings are for descriptive purposes only.
- 6.2 This POLICY is governed by the laws of New Zealand. Any disputes relating to its interpretation or thereunder shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.
- 6.3 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 6.4 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

Section 7: DEFINITIONS

In the POLICY:

- 7.1 AIRCRAFT means any object that is intended to fly or move in or through the air, atmosphere or space.
- 7.2 BUSINESS means the INFORMATION TECHNOLOGY described in the Schedule and (for Section B insuring clause only) the provision of canteens, social, sports welfare and childcare organisations for the benefit of the Insured's EMPLOYEES, first aid, fire and ambulance services and the maintenance of the INSURED'S premises.
- 7.3 CLAIM means:
- (a) any civil proceeding brought by a third party against the INSURED for compensation; or
 - (b) a written demand by a third party against the INSURED for monetary damages.
- 7.4 COMPUTER EQUIPMENT means but is not limited to any or any combination or part of data, computer hardware, operating system, application, software and computer chip, including microprocessor chip or embedded control logic.
- 7.5 DATA means:
- (a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; and
 - (b) deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method but will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
- 7.6 DEDUCTIBLE means, for Section A, the amount specified in Item 6(a) of the Schedule and, for Section B, the amount specified in Item 6(b) of the Schedule. For Optional Extension 5.1 (if operative) the DEDUCTIBLE shall be as described in that Extension.
- 7.7 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.
- 7.8 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship during or prior to the commencement of the INSURED PERIOD.
- 7.9 FAMILY MEMBER means the INSURED's:
- (a) Legal or defacto spouse, domestic partner or companion;

- (b) Parent, or the parent of the INSURED's legal or defacto spouse, domestic partner or companion;
 - (c) Children and children of (a) and (b) above
 - (d) Siblings.
- 7.10 INCIDENT means an event in the INSURANCE PERIOD which causes the INSURED's reputation and skill in the conduct of the BUSINESS to be brought into question.
- 7.11 INDEMNITY LIMIT means, for Section A, the amount specified in Item 5(a) of the Schedule and, for Section B, the amount specified in Item 5(b) of the Schedule.
- 7.12 INFORMATION TECHNOLOGY means:
- (a) any COMPUTER EQUIPMENT, software, hardware or firmware sold, manufactured, produced, installed, repaired, serviced, treated, supplied, distributed, licensed or shared by the INSURED and/or
 - (b) any service, advice or work provided by the INSURED in connection with 7.12 (a) and includes the provision of data processing, data warehousing, facilities management and outsourcing, telecommunication and data communication services provided by the INSURED in the conduct of the BUSINESS.
- 7.13 INQUIRY means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the BUSINESS of the INSURED.
- 7.14 INSURANCE PERIOD means the period specified in Item 4 of the Schedule.
- 7.15 INSURED means:
- (a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
 - (b) Any person who is during the INSURANCE PERIOD a principal, partner, director or EMPLOYEE of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the conduct of the BUSINESS; and
 - (c) For the purpose of Section A only any consultant, subcontractor or agent in the provision of INFORMATION TECHNOLOGY for or on behalf of the INSURED in the course of the INSURED's BUSINESS and for whose acts, errors or omissions the INSURED is liable.
 - (d) Means for the purpose of Section B only any consultant, subcontractor or agent in the provision of INFORMATION TECHNOLOGY for or on behalf of the INSURED in the course of the INSURED's BUSINESS, but only where Optional Extension 5.2 is operative.
- 7.16 LICENSEE means any party who enters into a licence agreement with the INSURED.
- 7.17 LOST DATA means DATA that cannot be located following a diligent search, and DATA that has been destroyed or damaged.
- 7.18 OCCURRENCE means an event, including continuous or repeated exposure to substantially the same general conditions, which results in PERSONAL INJURY or PROPERTY DAMAGE, neither expected nor intended by the INSURED.
- 7.19 PERSONAL INJURY means:
- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
 - (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
 - (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
 - (d) assault and battery committed by the INSURED for the purpose of preventing or eliminating danger to persons or property, resulting from an OCCURRENCE.

In the event of PERSONAL INJURY arising from latent injury, latent sickness, latent disease or latent disability, that PERSONAL INJURY shall be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

- 7.20 POLICY means this POLICY wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 7.21 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 7.22 PRODUCT means anything (after it has ceased to be in THE INSURED's possession or in the INSURED's legal control) which has been manufactured, grown, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by THE INSURED in the course of THE INSURED'S BUSINESS, including any packaging or containers (other than a VEHICLE) used to package or contain THE INSURED'S PRODUCT(S).
- 7.23 PRODUCT LIABILITY means any liability for an OCCURRENCE that is caused by or arises out of any PRODUCT.
- 7.24 PROPERTY DAMAGE means physical loss, damage or destruction of tangible property including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by or arises from an OCCURRENCE. In the event of a CLAIM arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such PROPERTY DAMAGE shall be deemed to have occurred on the day such deterioration or damage was first discovered.
- 7.25 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 7.26 PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant retained with OUR prior written consent (which shall not be unreasonably delayed or withheld).
- 7.27 RETROACTIVE DATE means the date specified in Item 7 of the Schedule but no earlier than the commencement of the INSURED's business specified in the Schedule but only while in the course of the PROFESSIONAL BUSINESS.
- 7.28 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a SUBSIDIARY of the INSURED or in which the INSURED owns or controls, directly or indirectly greater than 50% of the issued voting shares of such entity.
- 7.29 VEHICLE means any type of machine including attachments that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.
- 7.30 WATERCRAFT means anything made or intended to float on or in, or travel on or through or under water.
- 7.31 WE/US/OUR means DUAL New Zealand Limited, as agent of the Underwriters named in the Schedule under the heading "Underwriters".

Section 8: EXCLUSIONS

WE will not cover the INSURED, including for compensation, DEFENCE COSTS or other costs, expenses or loss, in respect of:

8.1 Asbestos and Toxic Mould

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) asbestos or other things that contain it; or
- (b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

Assumed Liability

Any obligation assumed by the INSURED under any agreement, except that this Exclusion does not apply to:

- (a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) Section B (PERSONAL INJURY and PROPERTY DAMAGE), where the liability arises from a provision in a contract for lease of real or personal property, other than a provision which obliges the INSURED to effect insurance or provide indemnity in respect of the subject matter of that contract; or
- (c) any liability which is under implied warranty as to fitness or quality as to the INSURED'S INFORMATION TECHNOLOGY; or
- (d) any liability which is in respect of the treatment or use of confidential information.

Aircraft and Watercraft

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) The ownership, maintenance, servicing, operation or use by the INSURED of:
 - (i) any AIRCRAFT; or
 - (ii) any WATERCRAFT exceeding 8 metres in length, except where such WATERCRAFT is not owned by the INSURED but used by the INSURED for business entertainment; or
- (b) PRODUCTS that the INSURED could reasonably be expected to know are installed in or on any AIRCRAFT; or

the use by the INSURED as a landing area for AIRCRAFT of any PROPERTY or structure owned occupied or controlled by the INSURED. The term "landing area" includes any area on which AIRCRAFT taxi, land, take-off, are housed, maintained or operated.

Associates

- (a) Any CLAIM by, on behalf of or for the benefit of any INSURED;
- (b) Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED;

irrespective of the capacity in which the CLAIM is brought.

Faulty Workmanship (In relation to Section B only)

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting or improving any work undertaken by the INSURED.

Financial

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- (a) the insolvency or financial failure of any person or entity involved in any project; or
- (b) the failure to provide, effect or maintain any bond or any form of insurance; or
- (c) actual or alleged advice in relation to finance, accounting or tax matters.

Fines and Penalties and Non-Compensatory

- (a) Taxes, fines or penalties;
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

Fraud and Dishonesty

- (a) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any law, statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.

Genetically Modified or Engineered Organisms (GMO)

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO).

For the purpose of this Exclusion, a Genetically Modified or Engineered Organism is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms.

Liability to EMPLOYEES

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- (a) any PERSONAL INJURY to any EMPLOYEE in the course of employment in the INSURED'S BUSINESS. (This exclusion does not apply in respect of the INSURED'S liability for injuries which are not compensated under the workers' compensation legislation in Queensland in respect of Occurrences where employment is not the major factor causing the injury); or
- (b) any PROPERTY DAMAGE to the property of any EMPLOYEE; or
- (c) based on, any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- (d) any liability for which THE INSURED is or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation including any legislation of any State or Territory (whether insurance is effected or not).

Nuclear

Any CLAIM or liability arising from or directly or indirectly attributable to or in connection with:

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

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

- (i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

Pollution

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of POLLUTANTS.

Prior knowledge

- (a) Any CLAIM arising from or in connection with any fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- (b) Any CLAIM arising from or in connection with any fact or circumstance of which notice has been or reasonably should have been given under any previous insurance.

- (c) Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.

8.14 **Product Recall**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the recall, withdrawal, inspection, repair, replacement or loss of use of the INSURED's PRODUCTS or of any property of which the INSURED's PRODUCTS form a part, if these PRODUCTS are recalled by the INSURED or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

8.15 **Property In Your Physical or Legal Control (Section B only)**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PROPERTY DAMAGE to property owned by the INSURED or in the INSURED's physical or legal control, other than:

- (a) premises which are leased or rented to the INSURED;
- (b) premises which the INSURED temporarily occupies in order for the INSURED to carry out work;
- (c) VEHICLES (not belonging to the INSURED or used by the INSURED or on the INSURED'S behalf) in the INSURED's physical or legal control whilst within a car park owned or operated by the INSURED unless part of the INSURED's BUSINESS is the operation of a car park for reward;
- (d) the INSURED's EMPLOYEES' property; or

other property in the INSURED's physical or legal control, provided that OUR total liability payable from all CLAIMS during the INSURANCE PERIOD shall not exceed \$250,000 in the aggregate for all CLAIMS.

8.16 **Refund of Payments**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the repayment of any money received or entitled to be received for any INFORMATION TECHNOLOGY, or any amount claimed by a third party as the price paid for the INSURED'S PRODUCTS.

8.17 **Trading Debts**

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.

8.18 **TSE**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD).

This exclusion applies regardless of any other contributing or aggravating cause or event.

8.19 **Vehicles**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the use of or ownership or operation by the INSURED of any VEHICLE which is legally required to be registered or legally required to be insured.

This exclusion shall not apply to:

- (a) CLAIMS or liability caused by or arising from the delivery or collection of goods to or from any VEHICLE where such PERSONAL INJURY or PROPERTY DAMAGE occurs beyond the limits of any carriage-way or thoroughfare;
- (b) CLAIMS or liability arising during the trade use of any VEHICLE at any site where the INSURED are working or at the INSURED's premises, provided that the INSURED is not indemnified under this POLICY where the VEHICLE is used only for the transportation or haulage of goods; or
- (c) CLAIMS or liability caused by or arising out of the use of an unregistered VEHICLE whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area.

Any CLAIM or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Any act of terrorism; or
- (c) Any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(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.

Section 9: CLAIM CONDITIONS

9.1 Co-operation

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM, liability or loss.
- (c) The INSURED waives all claims to legal professional privilege between themselves and any solicitor retained by US to act on the INSURED's behalf in relation to any CLAIM. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties.

WE may upon receipt of notice from the INSURED of any request for indemnity under this POLICY, take whatever action WE consider appropriate to protect the INSURED's position in respect of the CLAIM, and such action by US will not be regarded in any way as prejudicing the INSURED's or OUR position and will not be an admission of the INSURED's entitlement to indemnity.

9.2 INSURED's right to contest

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS and any other costs and expenses covered under this POLICY incurred up to the date upon which the CLAIM could have been settled.

9.3 Legal Defence and Settlement

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM or INQUIRY.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any CLAIM, liability or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM, liability or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, costs and expenses, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.

- (e) WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

9.4

Other Insurance

This POLICY will only cover loss or liability to the extent that the amount of such loss or liability is in excess of any indemnity or cover available to the INSURED in respect of that loss or liability under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect

This POLICY will only cover loss or liability to the extent that the amount of such loss or liability is in excess of any indemnity or cover available to the INSURED in respect of that loss or liability under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss or liability covered by this POLICY in respect of a CLAIM, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

9.5

Senior Counsel

- (a) WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (to be mutually agreed upon by the INSURED and US, or in default of agreement, nominated by US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

Section 10:

GENERAL CONDITIONS

10.1

Alteration to Risk

The INSURED must notify US in writing as soon as practicable but always within 90 calendar days of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) The INSURED failing to pay debts as and when those debts become due; or
- (c) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) Any material change in the nature of the BUSINESS.

WE may impose additional premiums or terms and conditions arising from such alteration of the risk.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

10.2

Assignment

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

10.3

Cancellation

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.

- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.
- (c) On cancellation of this POLICY, WE will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

10.4 **Claim Mitigation and Fee Recovery**

WE agree to provide cover in respect of any payment of the INSURED's fee (or balance of the outstanding fee at the time the circumstances outlined within this clause 10.4 arise and are submitted to US for consideration) in circumstances where a client has expressed dissatisfaction with the work undertaken by the INSURED and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts the INSURED is legally obligated to pay subcontractors at the time of the refusal to pay such fees) and threatens to bring a CLAIM against the INSURED for a sum greater than the outstanding fee but agrees not to pursue such CLAIM if the INSURED agrees not to press for their outstanding fee. OUR payment of the outstanding fee to the INSURED shall only be made if WE believe that this shall avoid a CLAIM for a greater amount and approval to settle the CLAIM in these circumstances has been received by the INSURED from US in writing.

The cover provided under this extension is sub-limited to \$100,000 any one potential CLAIM and in the aggregate for all potential CLAIMS inclusive of all DEFENCE COSTS. A separate DEDUCTIBLE will apply to each potential CLAIM under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

If all attempts to avoid a CLAIM fail and a CLAIM is received it is agreed that the total amount payable by US (including any amount already paid) shall not exceed the INDEMNITY LIMIT as shown in Item 5(a) of the Schedule. The INSURED shall pay US any amount that is finally recovered from the client.

WE will only pay the part of any CLAIM that is covered by this POLICY.

10.5 **Complaints Procedures**

Any enquiry or complaint relating to this Insurance should be referred to US in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Insurance and Savings Ombudsman
PO Box 10-845
Wellington 6143

For the purpose of this Clause only, "this Insurance" means the POLICY, "you/your" means the INSURED.

10.6 **Joint Insured (Section B only)**

Where more than one party comprises the INSURED, each of the parties will be considered as a separate and distinct unit and the word INSURED will be considered as applying to each party in the same manner as if a separate POLICY had been issued to each of them provided always that nothing in this Condition will result in an increase of the INDEMNITY LIMIT or DEFENCE COSTS.

10.7 **Jurisdictional Cover**

- (a) Subject to clause 5.1 (USA/Canada) (if operative), the coverage provided under this POLICY will extend to any CLAIMS brought in a court of law anywhere in the world except where such CLAIM:
 - (i) is brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
 - (ii) arises out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, the United States of America or the Dominion of Canada or their territories or protectorates; or
 - (iii) is determined by application of the laws of the United States of America or the Dominion of Canada or their territories or protectorates.
- (b) Where Optional Extension 5.1 (USA/Canada) is not operative, the exceptions in relation to the United States of America or the Dominion of Canada or their territories or protectorates in Conditions 10.7 and

10.12 do not apply to coverage under Section B (PERSONAL INJURY AND PROPERTY DAMAGE) in respect of CLAIMS arising from the presence outside New Zealand of any INSURED person who is normally resident in New Zealand and who is not undertaking manual work or supervision of work of any kind whilst in the United States of America or the Dominion of Canada or their territories or protectorates.

Provided always that the INDEMNITY LIMIT in respect of any coverage provided under this POLICY whatsoever (whether by Optional Extension 5.1 or otherwise) in connection with the United States of America or the Dominion of Canada or their respective territories or protectorates is inclusive of all DEFENCE COSTS and other costs and expenses covered by this POLICY, notwithstanding any other term or condition in this POLICY.

10.8 **Newly Created or Acquired Entity or Subsidiary**

WE agree to provide coverage to any entity or SUBSIDIARY acquired or created by the INSURED during the INSURANCE PERIOD for a period of up to sixty (60) days (but never beyond the expiry date of the INSURANCE PERIOD) from the date of such acquisition or creation.

WE may, at our discretion, agree to provide further coverage beyond a period of sixty (60) days (but never beyond the expiry date of the INSURANCE 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 Condition will only apply in respect of acts, errors or omissions occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by US.

10.9 **Severability and Non-Imputation (Section A only)**

Where more than one party comprises the INSURED, any conduct on the part of any party or parties whereby such party or parties:

- (a) made a misrepresentation to US before this POLICY was entered into; or
- (b) failed to comply with any terms or conditions of this POLICY;

the right of the remaining parties to indemnity will not be prejudiced provided always that such remaining parties:

- (i) be entirely innocent of and have had no prior knowledge of any such conduct; and
- (ii) notify US in writing of all known facts in relation to such conduct as soon as is reasonably practicable upon becoming aware of any such conduct.

10.10 **Several Liability Notice**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

10.11 **Subrogation**

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM, costs and expenses or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
- (c) WE shall not exercise any subrogated rights of recovery against any EMPLOYEE of the INSURED unless the CLAIM has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the EMPLOYEE.

Subject to its terms and conditions, the cover provided by the POLICY shall extend to the conduct of the BUSINESS by the INSURED anywhere in the world except within the territorial limits of the United States of America or the dominion of Canada or their respective territories or protectorates, other than in respect of the INSURED'S INFORMATION TECHNOLOGY which is not knowingly exported, sold, licensed or shared by the INSURED, or the INSURED'S agents or servants, to or in the United States of America or the Dominion of Canada or their respective territories or protectorates.

Section 11: LIMIT OF LIABILITY

11.1 Indemnity Limit (Section A)

Subject to Clause 2.2 (DEFENCE COSTS in addition) and Clause 3.19 Reinstatement of INDEMNITY LIMIT, OUR total liability under the POLICY for any one CLAIM and in the aggregate for all CLAIMS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM.

OUR total liability for any CLAIM(S) falling within Optional Extension 5.1 (if operative) is the INDEMNITY LIMIT inclusive of all DEFENCE COSTS and any other costs and expenses, in respect of all CLAIMS in the aggregate.

The INDEMNITY LIMIT is inclusive of amounts payable under Clauses 3.1 Attendance at Inquiries, 3.18 Public Relations, 3.5 Defence Costs for Breach of Contract, 3.6 Emergency Defence Costs, 3.8 Fidelity and Optional Extension Employment Practices Liability (clause 5.3).

WE may at any time pay the INDEMNITY LIMIT applying to any once CLAIM or series of CLAIMS (after deduction of sums already paid) or any lesser amount for which such CLAIMS can be settled and will then be under no further liability in connection with such CLAIMS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

11.2 Indemnity Limit (Section B)

- (a) OUR liability for all compensation payable in respect of any CLAIM or a series of CLAIMS caused by or arising out of one OCCURRENCE shall not exceed the INDEMNITY LIMIT;
- (b) All CLAIMS for compensation that result from one original source, or one original cause, shall be considered to have been caused by or arise out of a single OCCURRENCE; and
- (c) OUR total aggregate liability in any one INSURANCE PERIOD for PRODUCT LIABILITY CLAIMS shall not exceed the INDEMNITY LIMIT.
- (d) OUR total aggregate liability under clause 4.2 (c) for all CLAIMS and other costs and expenses, is the INDEMNITY LIMIT.

The INSURED agrees that in no circumstances shall the INDEMNITY LIMIT for Section A and the INDEMNITY LIMIT for Section B both apply to a CLAIM covered by this POLICY.

WE may at any time pay the INDEMNITY LIMIT applying to any once CLAIM or series of CLAIMS (after deduction of sums already paid) or any lesser amount for which such CLAIMS can be settled and will then be under no further liability in connection with such CLAIMS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

11.3 Deductible

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM or claim under the POLICY. Subject to clause (b) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM, DEFENCE COSTS and other costs and expenses in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are exclusive of DEFENCE COSTS.

- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by Section A of the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM.
- (f) For the purpose of CLAIMS covered by Section B of the POLICY, only one DEDUCTIBLE shall apply where the CLAIM(S) or a series of CLAIMS is/are caused by or arise(s) out of one OCCURRENCE or is caused by or arises out of one original source, or one original cause, or related original sources or causes.

Section 12 AUTHORITY

- 12.1 This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the Schedule.
- 12.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insured in accordance with the terms and conditions contained herein or endorsed hereon.