

**Errors & Omissions Liability Insurance Policy
for Information Technology Projects**

Important Notice - Please note that this is a Claims Made policy. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. The **Insured** should carefully read all of the **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by the **Policy**. The **Insured** is advised to consult its insurance agent or broker to ensure a clear understanding of the **Insured's** rights and obligations under the **Policy**.



Liberty
International
Underwriters



Policy Schedule

Policy Number IE-XX-SPC-0X-XXXXXX

Named Insured <Insert Full Names of the Entities/Persons to be Insured>

Principal <Insert name of Principal if applicable>

Project <Insert Name of Project>

Policy Period From: 4.00pm on XX.XX.XXXX local standard time
To: 4.00pm on XX.XX.XXXX local standard time

Limit of Liability \$X,000,000

Sub-Limits of Liability

Extension 2.16 Inquiry Costs	\$X,000,000
Extension 2.17 Replacing or Restoring Documents	\$X,000,000
Extension 3.2 Loss Mitigation & Rectification	\$X,000,000

Optional Extensions

3.1 Principal's Indemnity	Included/Not Included
3.2 Loss Mitigation & Rectification	Included/Not Included

Excess \$X,000

Policy Wording LIU AUS E&O Information Technology Projects Policy Wording (08-10)

Endorsements

Retroactive Date

Additional Insurance

This policy is valid only if this schedule is signed and dated below by a person authorised by **Liberty**.

Issued <day> <month> <year> in <office location>

Authorised by Liberty

Table of Contents

1. Insuring Clauses		5. Claims Conditions	
1.1 Errors & Omissions	1	5.1 Notification of Claims & Co-operation	8
1.2 Advancement of Defence Costs	1	5.2 Defence & Settlement	9
		5.3 Excess Insurance	9
2. Extensions		5.4 Allocation	9
2.1 Contractual Liability	1	5.5 Requirement to Contest a Claim	9
2.2 Implied Warranties & Conditions	1	5.6 Subrogation	10
2.3 Limitation of Liability Contracts	2		
2.4 Statutory Compensation Orders	2	6. General Conditions	
2.5 Contractors & Consultants	2	6.1 Limit of Liability	10
2.6 Spouses, Estates & Representatives	2	6.2 Excess	10
2.7 Exemplary & Punitive Damages	2	6.3 Non-Accumulation of Limits & Sub-Limits	10
2.8 Intellectual Property Rights	3	6.4 Severability of Proposal	10
2.9 Breach of Confidentiality	3	6.5 Non-Imputation	10
2.10 Interference with Privacy	3	6.6 Governing Law & Exclusive Jurisdiction	11
2.11 Defamation	3	6.7 Policy Interpretation & Construction	11
2.12 Trade Practices Act	3		
2.13 Joint Ventures	4	7. Definitions	
2.14 Vicarious Liability	4	7.1 Agent	11
2.15 Fraud & Dishonesty	4	7.2 Claim	11
2.16 Inquiry Costs	4	7.3 Defence Costs	11
2.17 Replacing or Restoring Documents	5	7.4 Document	11
2.18 New Subsidiaries	5	7.5 GST	11
		7.6 Information Technology Products	11
3. Optional Extensions		7.7 Information Technology Services	12
3.1 Principal's Indemnity	6	7.8 Inquiry	12
3.2 Loss Mitigation & Rectification	6	7.9 Insured	12
		7.10 Intellectual Property Rights	12
4. Exclusions		7.11 Liberty	12
4.1 Contractual Liability & Commercial Risks	6	7.12 Loss	13
4.2 Personal Injury	7	7.13 Money	13
4.3 Property Damage	7	7.14 Policy	13
4.4 Intellectual Property Rights	7	7.15 Policy Period	13
4.5 Fraud & Dishonesty	7	7.16 Pollutant	13
4.6 Retroactive Limitation	7	7.17 Premium	13
4.7 Prior Matters	7	7.18 Schedule	13
4.8 Related Parties	7	7.19 Senior Counsel	13
4.9 Owner's & Occupier's Liability	7	7.20 Subsidiary	13
4.10 War & Nuclear	8		
4.11 Pollution	8		
4.12 Management Liability	8		
4.13 Product Recall	8		
4.14 Asbestos	8		

Errors & Omissions Insurance

In consideration of payment of the **Premium** by the **Insured**, and subject to all the terms, conditions and exclusions, including all definitions, of the **Policy**, **Liberty** agrees as follows:

1. Insuring Clauses

1.1 Errors & Omissions

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging an act, error or omission of the **Insured**:

- (a) in the performance of **Information Technology Services**; or
- (b) in the provision of **Information Technology Products**,

in respect of the **Project** specified in the **Schedule**.

1.2 Advancement of Defence Costs

Liberty will pay for **Defence Costs** in respect of a **Claim** covered under Insuring Clause 1.1 or under any applicable extension. **Liberty** will pay for these **Defence Costs** as and when they are incurred prior to final resolution of the **Claim**.

However, each **Insured** shall repay to **Liberty** all payments of **Defence Costs** incurred on that **Insured's** behalf if and to the extent it is established that such **Defence Costs** are not insured under the **Policy**.

Defence Costs are subject to the **Excess** and form part of the **Limit of Liability**.

2. Extensions

Subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, **Liberty** further agrees to extend cover provided under the **Policy** as follows:

2.1 Contractual Liability

Notwithstanding Exclusion 4.1(a) in respect of "Contractual Liability & Commercial Risks", **Liberty** will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay in respect of a **Claim** under an indemnity and/or hold harmless term of a contract to the extent such **Loss** results from an act, error or omission of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

2.2 Implied Warranties & Conditions

Notwithstanding Exclusion 4.1(a) in respect of "Contractual Liability & Commercial Risks", **Liberty** will pay on behalf of the **Insured** the **Loss** which the **Insured** becomes legally liable to pay in respect of a **Claim** alleging breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and/or the terms of the Trade Practices Act 1974 (Cth), as amended from time to time, or any similar Fair Trading legislation of any State or Territory of Australia, which results directly from an act, error or omission of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

Errors & Omissions Insurance

2.3 Limitation of Liability Contracts

Notwithstanding Claims Condition 5.6 in respect of "Subrogation", **Liberty** recognises that the **Insured** may enter into written contracts with other parties relating to the performance of **Information Technology Services** or in the provision of **Information Technology Products** which may exclude or limit the liability of such parties and **Liberty** agrees that such contracts will not prejudice the **Insured's** right to indemnity under the **Policy**. The cover provided under this extension does not apply to contracts (whether or not they are written contracts) entered into as a result of a dispute which involves the **Insured** in any way.

2.4 Statutory Compensation Orders

The definition of **Loss** in Definition 7.12 is extended to include compensation payable by the **Insured** pursuant to a court order entered against the **Insured** in civil penalty proceedings brought under legislation enacted by the Commonwealth of Australia or an Australian State or Territory or New Zealand. This extension does not cover statutory fines or penalties.

2.5 Contractors & Consultants

The definition of **Insured** in Definition 7.9 is extended to include any natural person, or company with no more than two employees, who has a written contract with the **Named Insured** to perform **Information Technology Services** or provide **Information Technology Products** but only in relation to the performance of **Information Technology Services** or in the provision of **Information Technology Products** for or on behalf of the **Named Insured**.

2.6 Spouses, Estates & Representatives

Liberty will cover:

- (a) in the event of the death, incapacity or bankruptcy of an **Insured**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives; or
- (b) any **Claim** brought against the lawful spouse or domestic partner of an **Insured**, as if the **Claim** had been brought against that **Insured**.

No cover is provided under this extension for any conduct or wrongful act committed or allegedly committed by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner.

2.7 Exemplary & Punitive Damages

Notwithstanding Definition 7.12(iv) in respect of "**Loss**", **Liberty** will pay on behalf of the **Insured** the exemplary or punitive damages which the **Insured** is legally liable to pay as a result of a **Claim** covered under the **Policy**.

However:

- (a) the cover provided under this extension only applies in respect of a **Claim** brought pursuant to the laws of the Commonwealth of Australia or an Australian State or Territory or New Zealand; and
- (b) the maximum amount of exemplary or punitive damages payable by **Liberty** under this extension shall not exceed the amount of compensatory damages payable in respect of the **Claim**.

Errors & Omissions Insurance

2.8 Intellectual Property Rights

Notwithstanding Exclusion 4.4 in respect of "Intellectual Property Rights", **Liberty** will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging the **Insured** has infringed **Intellectual Property Rights** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

However, no cover is provided under this extension for any **Loss** or **Defence Costs** which arise out of or are in any way connected with:

- (a) any intentional infringement of **Intellectual Property Rights**;
- (b) any passing off, infringement of patent or trade secret;
- (c) any legal proceedings brought within the United States of America and/or Canada or any of their territories or protectorates;
- (d) the enforcement of any judgment or award obtained within or determined pursuant to the laws of the United States of America and/or Canada or any of their territories or protectorates; or
- (e) any legal proceedings in which the laws of the United States of America and/or Canada or any of their territories or protectorates are applicable even if only in a limited respect.

2.9 Breach of Confidentiality

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging breach of confidentiality by the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

2.10 Interference with Privacy

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging unlawful interference with privacy by the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

2.11 Defamation

Notwithstanding Exclusion 4.2 in respect of "Personal Injury", **Liberty** will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging any libel, slander, defamation or injurious falsehood by the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**. No cover is provided under this extension for any **Claim** resulting from any intentional libel, slander, defamation or injurious falsehood.

2.12 Trade Practices Act

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging the **Insured** has engaged in conduct that is misleading or deceptive or likely to mislead or deceive under the terms of the Trade Practices Act 1974 (Cth), as amended from time to time, or any Fair Trading legislation of any State or Territory of Australia in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

Errors & Omissions Insurance

2.13 Joint Ventures

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging an act, error or omission of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products** in the **Insured's** capacity as a joint venture partner but only to the extent of the **Insured's** own liability as a joint venture partner.

Liberty will only pay for **Defence Costs** incurred by the **Insured** in respect of such **Claim** for its own liability as a joint venture partner.

2.14 Vicarious Liability

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging an act, error or omission by an **Agent** of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

Liberty will not be liable under this extension for the **Agent's** own liability, nor will **Liberty** be prevented from seeking recovery from any **Agent**.

2.15 Fraud & Dishonesty

Notwithstanding Exclusion 4.5 in respect of "Fraud & Dishonesty", **Liberty** will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay in respect of a **Claim** alleging fraudulent or dishonest conduct of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

However, no cover is provided under this extension:

- (a) to any person, company or other entity who has committed or condoned the fraudulent or dishonest conduct; or
- (b) in respect of a **Claim** arising from or in any way connected with loss of **Money**.

2.16 Inquiry Costs

Liberty will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by the **Insured** (but excluding the **Insured's** salaries, wages, travel and accommodation expenses) in preparing for and attending an **Inquiry** provided that:

- (a) such costs and expenses were incurred with the prior written consent of **Liberty** which consent will not be unreasonably withheld; and
- (b) the notice requiring the **Insured** to attend the **Inquiry** is first served upon the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

The **Insured** shall repay to **Liberty** all payments of **Inquiry** representation costs and expenses incurred on the **Insured's** behalf if and to the extent it is established that such **Inquiry** representation costs and expenses are not insured under the **Policy**.

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

Errors & Omissions Insurance

2.17 Replacing or Restoring Documents

Notwithstanding Exclusion 4.3 in respect of "Property Damage", **Liberty** will pay on behalf of the **Insured** the costs the **Insured** incurs with the prior written consent of **Liberty** for replacing or restoring any **Documents** which are destroyed, damaged or after diligent search cannot be found.

Such destruction, damage or loss must result solely from the performance of **Information Technology Services** or the provision of **Information and Technology Products** by the **Insured** and be discovered for the first time during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

Liberty will not pay for any destruction, damage or loss resulting from:

- (a) wear and tear or gradual deterioration;
- (b) any computer virus; or
- (c) an act, error or omission committed or allegedly committed by any person who is not a director, partner or employee of the **Insured** at the time the destruction, damage or loss of such **Documents** is first discovered.

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

2.18 New Subsidiaries

The definition of **Subsidiary** in Definition 7.20 is extended to include any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, becomes a subsidiary of the **Named Insured** during the **Policy Period** provided that:

- (a) in the case of an acquisition, the revenue of the new subsidiary for the 12 months preceding the date of its acquisition does not exceed 10% of the consolidated revenue of the **Named Insured** and its **Subsidiaries** for the 12 months preceding the commencement of the **Policy Period**;
- (b) the new subsidiary is not incorporated in the United States of America and/or Canada or any of their territories or protectorates;
- (c) the new subsidiary does not provide of **Information Technology Services** or **Information Technology Products** within the United States of America and/or Canada or any of their territories or protectorates; and
- (d) the new subsidiary has no paid or incurred professional indemnity claims against it for the 5 years preceding the date of its acquisition.

In respect of any other new subsidiary to which any of (a) to (d) do not apply, **Liberty** will provide cover for a period of 45 days (but not beyond the end of the **Policy Period**) from the effective date of the new subsidiary being acquired or created. Upon provision to **Liberty** by the **Named Insured** of full details of the new subsidiary, **Liberty** will consider providing cover for the new subsidiary for a further period on such terms and conditions and for such additional premium as may be agreed.

Cover in respect of any such new subsidiary applies only in respect of an act, error or omission committed or allegedly committed in the performance of **Information Technology Services** or in the provision of **Information Technology Products** whilst the subsidiary is a subsidiary of the **Named Insured**.

3. Optional Extensions

The following extensions are subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, and shall apply only if they are specifically included in the **Schedule**.

3.1 Principal's Indemnity

Liberty will pay on behalf of the **Principal** the **Loss** which it becomes legally liable to pay as a result of a **Claim** made against the **Principal** by any person or entity (other than an **Insured**) which results directly from an act, error or omission of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

For the purposes of this extension, the **Principal** shall be deemed to be an **Insured** in the definition of **Claim, Loss and Defence Costs**.

3.2 Loss Mitigation & Rectification

Liberty will pay to the **Insured** the direct costs and expenses incurred by the **Insured** in taking action necessary to rectify, or to mitigate the effects of, any act, error or omission of the **Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products** that would otherwise result in a **Claim** covered under the **Policy**, provided always that:

- (a) the **Insured** first discovers such act, error or omission during the **Policy Period** and notifies **Liberty** of such act, error or omission during the **Policy Period**; and
- (b) the **Insured** notifies **Liberty** during the **Policy Period** of its intention to take such action and obtains **Liberty's** written consent prior to incurring any such direct costs or expenses.

No cover is provided for:

- (i) indirect costs and expenses such as loss or diminution of the **Insured's** profit, bonus, incentive payment or opportunity cost; or
- (ii) costs and expenses of materials or **Professional Services**, which result in an increased quality or standard from that specified in the design parameters of the relevant contract.

Notification under this extension must be given to **Liberty** in accordance with Claims Condition 5.1(a) and the **Insured** must give **Liberty** such information and cooperation as it may reasonably require in accordance with Claims Condition 5.1(b).

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

4. Exclusions

Liberty will not pay for any **Loss, Defence Costs** or any other amounts insured under the **Policy** for, arising out of, or in any way connected with:

4.1 Contractual Liability & Commercial Risks

- (a) a liability which the **Insured** has assumed under a contract unless such liability would have attached in the absence of such contract;
- (b) cost guarantees or cost estimates being exceeded by the **Insured** or any other party;
- (c) the insolvency, receivership, administration, bankruptcy or liquidation of the **Insured** or any party involved in the **Project**;
- (d) the failure to provide, effect or maintain any bond, surety or insurance;
- (e) any trading debt incurred by the **Insured**;
- (f) any guarantee given by the **Insured** for a debt; or
- (g) any dispute with a third party regarding payments of, or entitlement to, any commission or royalty.

Errors & Omissions Insurance

4.2 Personal Injury

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person.

4.3 Property Damage

loss of, damage to or destruction of any real or personal property or any consequential losses flowing from such loss, damage or destruction.

4.4 Intellectual Property Rights

any actual, potential or alleged infringement of **Intellectual Property Rights**.

4.5 Fraud & Dishonesty

any fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission including any intentional violation or breach of any law or regulation committed or allegedly committed by the **Insured**.

This exclusion will only apply where it is established by an admission of such **Insured** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

4.6 Retroactive Limitation

any act, error or omission committed or allegedly committed prior to the **Retroactive Date** specified in the **Schedule**.

4.7 Prior Matters

- (a) any written demand or legal proceedings for compensation or **Inquiry** made, threatened, intimidated against or involving the **Insured** prior to the commencement of the **Policy Period**;
- (b) any facts that, before the commencement of the **Policy Period**, the **Insured** was aware, or a reasonable person would have been aware, might give rise to a claim under the **Policy**;
- (c) any facts that might give rise to a claim under the **Policy** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Policy Period**;
- (d) any facts that might give rise to a claim under the **Policy** which have been disclosed to any insurer in any proposal for insurance before the commencement of the **Policy Period**; or
- (e) any facts that might give rise to a claim under the **Policy** which were disclosed to **Liberty** in the proposal.

4.8 Related Parties

any **Claim** made by or on behalf of:

- (a) one or more **Insured** against another **Insured** other than a **Claim** for contribution or indemnity which results directly from another **Claim** which would be covered under the **Policy** if made directly against such other **Insured**;
- (b) a child, sibling, spouse or partner of an **Insured** or a parent of a spouse or partner of an **Insured**;
- (c) any entity which is owned, controlled or managed by any **Insured**; or
- (d) any parent company or other entity which owns, controls or manages any **Insured**.

4.9 Owner's & Occupier's Liability

the ownership, management, control or occupation of real property by the **Insured**.

Errors & Omissions Insurance

4.10 War & Nuclear

- (a) war (whether declared or not), civil disturbance or riot;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or any waste from the combustion of nuclear fuel; or
- (c) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear weapon, installation, reactor or other nuclear assembly or nuclear component thereof.

4.11 Pollution

the actual or alleged presence, discharge, dispersal, release or escape of any **Pollutant** or the cost of removing, nullifying or cleaning up any **Pollutant**.

4.12 Management Liability

the **Insured** acting in the capacity of a director or officer of a body corporate.

4.13 Product Recall

any costs incurred in withdrawing or recalling any **Information Technology Products** (including any costs involved in inspecting, repairing or replacing) incurred because of any known or suspected defect or deficiency. This exclusion does not apply to **Claims** for loss of use resulting from such withdrawal, recall, inspection, repair or replacement.

4.14 Asbestos

asbestos, asbestos fibres or derivatives of asbestos.

5. Claims Conditions

5.1 Notification of Claims & Co-operation

As soon as the **Insured** becomes aware of a **Claim** or **Inquiry** during the **Policy Period**, the **Insured** must:

- (a) notify **Liberty** in writing of the **Claim** or **Inquiry**. The notification must be sent to:

The Claims Department
Liberty International Underwriters
Level 38, Governor Phillip Tower
1 Farrer Place
Sydney, New South Wales, Australia 2000
Tel: +61-2-8298 5800
Fax: +61-2-8298 5887
Email: spcaclaims@libertyiu.com
- (b) give **Liberty** such information and co-operation as it may reasonably require including but not limited to:
 - (i) a description of the **Claim** or **Inquiry**;
 - (ii) the nature of the alleged act, error or omission;
 - (iii) the nature and amount of the alleged or potential loss;
 - (iv) the names of actual or potential claimants; and
 - (v) the manner in which the **Insured** first became aware of the **Claim** or **Inquiry**.

If **Loss**, **Defence Costs** or any other amounts insured under the **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** within a reasonable time of making a claim under the **Policy** and provide **Liberty** with details of the other insurance.

Errors & Omissions Insurance

5.2 Defence & Settlement

Liberty may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.

The **Insured** must:

- (a) take all reasonable steps to mitigate loss;
- (b) not agree to any waiver or limitation of or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty** which consent shall not be unreasonably withheld; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
 - (i) the cause and consequences of any **Claim**;
 - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
 - (iii) whether **Liberty** has any liability to the **Insured** under the **Policy** and, if so, the extent of its liability,and, where applicable, conducting the defence of any **Claim**.

5.3 Excess Insurance

The **Policy** is in excess of any **Additional Insurance** specified in the **Schedule**.

5.4 Allocation

In the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by the **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of **Loss**, **Defence Costs** or any other amount insured under the **Policy** which relate solely to what is covered under the **Policy**.

In the event that an agreement cannot be reached, **Senior Counsel** shall determine, as an expert but not an arbitrator, a fair and proper allocation. Until **Senior Counsel** has made his or her determination, **Liberty** may, in its absolute discretion, pay such **Loss**, **Defence Costs** or any other amount insured under the **Policy** as it considers appropriate.

5.5 Requirement to Contest a Claim

Liberty shall not require the **Insured** to contest any **Claim** unless **Senior Counsel** advises that such **Claim** should be contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter (including potential **Loss** and **Defence Costs**) and the prospects of the **Insured** successfully defending the **Claim**.

In the event that **Senior Counsel** recommends settlement in respect of a **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Liberty** shall not exceed the amount for which the **Claim** could have been settled plus **Defence Costs** incurred with **Liberty's** prior written consent up to the date of such election.

Errors & Omissions Insurance

5.6 Subrogation

If **Liberty** grants indemnity under the **Policy**, then **Liberty** shall be subrogated to the **Insured's** rights of recovery against any person or entity whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything (including but not limited to excluding or limiting the liability of other parties in contracts, whether or not they are written contracts) that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party. Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** (including **Defence Costs**) shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

6. General Conditions

6.1 Limit of Liability

The maximum amount payable by **Liberty** under the **Policy** is the **Limit of Liability**. The **Limit of Liability** is inclusive of **Loss, Defence Costs, Sub-Limits of Liability** and any other amounts insured under the **Policy** but does not include costs incurred by **Liberty** in determining whether the **Policy** provides insurance to the **Insured**.

6.2 Excess

Liberty will only pay in respect of each **Loss** (or alleged **Loss**) and associated **Defence Costs** and other amounts insured under the **Policy**, the amount which is above the **Excess**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

6.3 Non-Accumulation of Limits & Sub-Limits

If two or more policies of insurance issued by **Liberty** apply to the same **Loss**, the maximum amount payable by **Liberty** under all such policies is the highest of the applicable limit or sub-limit of liability specified in the schedules for all such policies and there will only be one excess payable which will be the excess which applies to that limit or sub-limit of liability.

6.4 Severability of Proposal

Failure by any **Insured** to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any **Insured** to **Liberty** shall not prejudice the right of any other **Insured** to cover under the **Policy**. Cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such failure or misrepresentation.

6.5 Non-Imputation

For the purposes of determining the availability of cover under the **Policy**, the conduct of one **Insured** shall not be imputed to any other **Insured**, provided that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such conduct.

Errors & Omissions Insurance

6.6 Governing Law & Exclusive Jurisdiction

The **Policy** is governed by the law in force in the Australian State or Territory in which the **Policy** is issued. All matters arising from or relating to the construction or operation of the provisions of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

6.7 Policy Interpretation & Construction

The headings in the **Policy** are for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** and Section 7 - Definitions.

7. Definitions

In the **Policy**:

7.1 Agent means a natural person, company or other entity who has or had a written contract with a **Named Insured** under which the **Named Insured** engages the natural person or company or other entity to act for or on behalf of the **Named Insured** in the performance of **Information Technology Services** or in the provision of **Information Technology Products**.

7.2 Claim means any written demand or legal proceedings for compensation first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period** which may result in **Loss**, **Defence Costs** or any other amounts insured under the **Policy**.

7.3 Defence Costs means:

- (a) reasonable and necessary costs and expenses incurred by **Liberty**, or by the **Insured** but only with **Liberty's** prior written consent (which shall not be unreasonably withheld), solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any **Claim** covered under the **Policy**; and
- (b) the costs of obtaining **Senior Counsel's** advice or determination under the **Policy**.

Defence Costs does not include the **Insured's** salaries, wages, allowances, fees, commissions, awards, bonuses, travel or accommodation expenses incurred by the **Insured** in assessing, investigating, dealing with and assisting others to deal with any **Claim**.

7.4 Document means a document of any nature whether written, printed or reproduced by any method including computer records or electronic data, in the possession or control of the **Insured** or the property of the **Insured** but does not include **Money**.

7.5 GST means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty or interest payable in respect of that tax.

7.6 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** but only in respect of the **Project** specified in the **Schedule**.

Errors & Omissions Insurance

7.7 Information Technology Services means:

- (a) software development;
- (b) systems integration;
- (c) information management consulting;
- (d) electronic data processing;
- (e) computer facilities management;
- (f) computer programming;
- (g) design, manufacture and installation of **Information Technology Products**;
- (h) computer and electronic equipment maintenance and repair;
- (i) computer and data network analysis, consulting and design;
- (j) telecommunication and data communication services;
- (k) internet services;
- (l) network consulting and support services; and
- (m) call centre services,

but only in respect of the **Project** specified in the **Schedule**.

7.8 Inquiry means any administrative or regulatory proceeding, official investigation, inquiry or hearing into the performance of **Information Technology Services** or the provision of **Information Technology Products** by the **Insured** which an **Insured** is legally required to attend if findings from such proceeding, investigation, inquiry or hearing could lead to a **Claim** being made against the **Insured** which may be covered under the **Policy**.

7.9 Insured means each of the following:

- (a) the **Named Insured** and its **Subsidiaries**; and
- (b) any past, present or future director, partner or employee of the **Named Insured** but only in relation to **Information Technology Services** performed or **Information Technology Products** provided for or on behalf of the **Named Insured** whilst they are a director, partner or employee of the **Named Insured**.

7.10 Intellectual Property Rights means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trade marks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.

7.11 Liberty means Liberty International Underwriters which is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A. (The liability of members is limited).

Errors & Omissions Insurance

7.12 Loss means:

- (a) damages or claimant's costs or both payable by the **Insured** pursuant to an award or judgment entered against the **Insured**;
- (b) settlements negotiated by **Liberty** and consented to by the **Insured**; or
- (c) settlements negotiated by the **Insured** but only with the prior written consent of **Liberty**.

Loss does not include any:

- (i) amounts uninsurable at law;
- (ii) wages, salaries, allowances, fees, commissions, awards, bonuses, travel or accommodation costs incurred by the **Insured** in assessing, investigating, dealing with or assisting others to deal with the claim;
- (iii) fines or penalties;
- (iv) exemplary, aggravated, multiple or punitive damages; or
- (v) **GST** imposed or payable in respect of the **Premium** or any payment of insured amounts made under the **Policy**.

All **Loss** attributable to one source or originating cause shall be deemed one **Loss**.

7.13 Money means currency, coins, bank notes, bullion, precious metals, gems, jewellery, coupons, stamps, cheques, travellers' cheques, registered cheques, postal orders and money orders.

7.14 Policy means this policy wording, any endorsements to it and the **Schedule**.

7.15 Policy Period means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.

7.16 Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, noise, acids, alkalis, compounds, chemicals, mould or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

7.17 Premium means the amount payable by the **Insured** for the **Policy** including any applicable charges as advised by **Liberty**.

7.18 Schedule means the schedule attached to the **Policy** and signed by a person authorised by **Liberty**.

7.19 Senior Counsel means a Senior Counsel to be mutually agreed upon by **Liberty** and the **Insured** or, in the absence of agreement, to be appointed by the current President of the Law Society in the State or Territory in which the **Policy** is issued.

7.20 Subsidiary means any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, was or is a subsidiary of the **Named Insured** prior to or at the commencement of the **Policy Period**.

Cover in respect of any such company applies only in respect of acts, errors or omissions committed, or allegedly committed in the performance of **Information Technology Services** or the provision of **Information Technology Products** whilst the company was or is a subsidiary of the **Named Insured**.