
W. R. Berkley Insurance Ireland

**CONSTRUCTION INDUSTRY
PROFESSIONAL INDEMNITY INSURANCE**

SPECIMEN



IMPORTANT NOTICE TO THE INSURED

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice that appears overleaf.

NOTICE TO THE INSURED

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or you wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or other intermediary who arranged this insurance for you.

If your complaint is not resolved to your satisfaction you may contact us at the following address:

Compliance Officer,
W.R. Berkley Insurance Ireland
Top Floor, Unit 3C Fingal Bay Business Park
Balbriggan
Co. Dublin

If you are still not satisfied, you may contact the following organisation:

The Irish Insurance Federation's Insurance Information Service

39 Molesworth Street, Dublin 2.

Phone: 01/6761914

Fax: 01/6761943

E-mail: iis@iif.ie

Website: www.iif.ie

The service can advise you on how to proceed further, and may be able to help in resolving the problem.

Taking any of these options will not affect your right to take legal action.

W. R. Berkley Insurance Ireland is a registered branch office (number 906066) of W. R. Berkley Insurance (Europe), Limited, a limited liability company registered in England under number 4681277 and regulated by the Financial Services Authority under FRN 223981.

Insurance Act 1936

All monies which become or may become payable by INSURERS to the INSURED, shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in the Republic of Ireland.

Finance Act 1990

The appropriate stamp duty has been or will be paid in accordance with the provisions of Section 113 of the Finance Act, 1990.

W. R. Berkley Insurance Ireland

**CONSTRUCTION INDUSTRY
PROFESSIONAL INDEMNITY INSURANCE**

INDEX

Item	Page
NOTICE TO THE INSURED.....	2
INSURING CLAUSES	4
EXTENSIONS.....	5
CLAIMS CONDITIONS.....	7
GENERAL CONDITIONS	8
EXCLUSIONS.....	10
DEFINITIONS AND INTERPRETATIONS.....	13
SCHEDULE.....	16

**CONSTRUCTION INDUSTRY
PROFESSIONAL INDEMNITY INSURANCE**

***“THIS IS A CLAIMS MADE
AND CIRCUMSTANCE NOTIFIED INSURANCE”***

INSURING CLAUSES

The INSURED having made a written proposal to INSURERS bearing the date shown in the SCHEDULE containing particulars and statements which it is hereby agreed are the basis of this insurance and are to be considered as incorporated herein, and in consideration of the INSURED having agreed to pay the premium shown in the SCHEDULE, INSURERS agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this insurance.

1.1. Insuring Clause

INSURERS shall indemnify the INSURED, up to the INDEMNITY LIMIT, for the amount of any claim including claimant’s costs and expenses first made against the INSURED and notified to INSURERS during the POLICY PERIOD in respect of any legal liability which arises out of the exercise and conduct of the BUSINESS.

1.2 DEFENCE COSTS

INSURERS shall also indemnify the INSURED for DEFENCE COSTS where such costs have been incurred with INSURERS’ prior written consent. Such DEFENCE COSTS shall be payable in addition to the INDEMNITY LIMIT.

In the event that a settlement is made with any party in excess of the INDEMNITY LIMIT, INSURERS’ liability in respect of DEFENCE COSTS shall be in the same proportion that the INDEMNITY LIMIT bears to the sum which would be payable by INSURERS but for the INDEMNITY LIMIT.

EXTENSIONS

The following extensions are granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance.

2.1 Loss of or Damage to DOCUMENTS

In the event of physical loss of or damage to DOCUMENTS suffered and notified to INSURERS during the POLICY PERIOD, the INSURED is indemnified for any claim or reasonable and necessary costs and expenses incurred in replacing, restoring or reconstituting any DOCUMENTS which are the property of the INSURED or are in the INSURED's care, custody or control.

The maximum amount payable by INSURERS shall be €50000 in the aggregate. An EXCESS of €1,000 each and every claim shall apply. Should the EXCESS shown in the SCHEDULE be less than €1,000 each and every claim then the EXCESS shown in the SCHEDULE shall apply.

2.2 Infringement of Copyright or Patents

The INSURED is indemnified for reasonable DEFENCE COSTS incurred during the POLICY PERIOD with INSURERS' prior written consent (not to be unreasonably withheld) in the defence of any injunction and/or proceedings in respect of infringement or alleged infringement of any copyright or patents or other intellectual property rights vested in or otherwise enjoyed by the INSURED.

The maximum amount payable by INSURERS shall be €50000 in the aggregate. An EXCESS of €1,000 each and every claim shall apply. Should the EXCESS shown in the SCHEDULE be less than €1,000 each and every claim then the EXCESS shown in the SCHEDULE shall apply.

2.3 Joint Venture/Consortium

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, whether jointly or severally, which arises out of the exercise and conduct of the BUSINESS whilst a member of a joint venture or consortium where such joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the INSURED's proportion) has been declared to INSURERS, whether or not the joint venture or consortium is conducted through a separate legal entity.

2.4 Self Employed Persons

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, arising out of the use of self employed or contract hire persons in the exercise and conduct of the BUSINESS. The use of individual persons need not be disclosed to INSURERS, but details of payments to such persons must be declared to INSURERS at renewal of this insurance. For the purpose of this insurance such persons are deemed to be employees of the INSURED.

2.5 Indemnity to Employees, Former Employees and/or Consultants

Employees or former employees of the INSURED are indemnified for any claim first made against them and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS.

Former partners, former directors or former employees of the INSURED who have continued as consultants to the INSURED and any persons who were formerly consultants to the INSURED are indemnified in respect of any claim first made against them and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS.

2.6 Defamation, Libel and Slander

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD in direct consequence of any defamation, libel or slander by the INSURED which arises out of the exercise and conduct of the BUSINESS.

An EXCESS of €1,000 each and every claim shall apply, unless the EXCESS shown in the SCHEDULE is greater than €1,000 each and every claim, in which event the EXCESS shown in the SCHEDULE shall apply.

2.7 Prosecution DEFENCE COSTS

The INSURED is indemnified, in addition to the INDEMNITY LIMIT, for any DEFENCE COSTS incurred during the POLICY PERIOD with the prior written consent of the INSURERS in the defence of any criminal proceedings (“proceedings”) against the INSURED, or any of its employees, arising from alleged breach of any Irish statutory regulation relating to building or construction works where such alleged breach arises out of the exercise and conduct of the BUSINESS in Ireland.

This extension (only) is subject to the following:-

- 2.7.1 the proceedings could otherwise give rise to a claim against the INSURED that is (or would be) indemnifiable under this insurance
- 2.7.2 in the reasonable belief of INSURERS the defence of such proceedings would assist in the defence of any claim against the INSURED arising from such proceedings that would be indemnifiable under this insurance
- 2.7.3 any subsequent or concurrent claim that is indemnifiable under this insurance and that arises out of any proceedings notified under this extension shall be deemed to be a CIRCUMSTANCE and shall be subject to the claims conditions (see 3.2)
- 2.7.4 any appeal against the outcome of any initial proceedings shall be deemed to be “proceedings” for the purpose of this extension
- 2.7.5 the maximum amount payable by INSURERS shall be €50,000 in the aggregate
- 2.7.6 INSURERS shall not be liable for the first €1,000 of DEFENCE COSTS incurred in respect of each prosecution.

2.8 Dishonesty of Employees

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS brought about, or contributed to, by the fraudulent, criminal or malicious act or omission of any person at any time employed by the INSURED provided that:-

- 2.8.1 no person committing such fraudulent, criminal or malicious act or omission shall be entitled to indemnity
- 2.8.2 any monies which but for such fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance.

CLAIMS CONDITIONS

The following claims conditions apply to this insurance:-

3.1 Conditions Precedent to Liability

All conditions set out below (3.2 – 3.5 inclusive) are deemed to be conditions precedent to INSURERS' liability under this insurance.

3.2 Discovery of a Claim or CIRCUMSTANCE

3.2.1 If during the POLICY PERIOD the INSURED receives notice of any claim that is indemnifiable under this insurance other than any claim provided for in 3.2.2, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable

3.2.2 If during the POLICY PERIOD the INSURED receives a LETTER OF CLAIM, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable and in any event within 14 days from receipt of such LETTER OF CLAIM and not later than expiry of the POLICY PERIOD

3.2.3 If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS of such CIRCUMSTANCE as soon as practicable
INSURERS agree that any CIRCUMSTANCE notified to them during the POLICY PERIOD which subsequently gives rise to a claim after expiry of this insurance shall be deemed to be a claim first made during the POLICY PERIOD.

3.3 Notice

Notice to INSURERS under condition 3.2 shall not be valid unless it has been received in writing by the persons shown in the SCHEDULE.

3.4 Admission of Liability

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

3.5 Conduct of Claims

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

If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by the operation of condition 4.3.

GENERAL CONDITIONS

The following general conditions apply to this insurance:-

4.1 Retroactive Date

Where a retroactive date is specified in the SCHEDULE, this insurance shall not indemnify the INSURED for any claim notified to INSURERS and arising out of the exercise and conduct of the BUSINESS prior to the said retroactive date.

4.2 Subrogation

If any payment is made by INSURERS, the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made and the INSURED shall take all reasonable steps to preserve such rights. However, INSURERS agree to waive any rights of recovery against any employee of the INSURED or former employee, self employed person or consultant of the INSURED unless liability has resulted in whole or part from any act or omission on the part of such person which is dishonest, fraudulent, criminal or malicious.

4.3 Insurance Disputes

This insurance is governed by the laws of Ireland. Any dispute or difference between the INSURED and INSURERS arising from this insurance shall be referred for determination to Senior Counsel of the Irish Bar, to be mutually agreed between INSURERS and the INSURED, or any other person as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council of Ireland shall appoint a suitable person. The findings of the agreed or appointed person shall be binding on INSURERS and the INSURED, and the cost of such referral shall be allocated by the agreed or appointed person on a fair and equitable basis.

4.4 Claim Settlements

INSURERS may at any time pay to the INSURED in connection with any claim or claims the INDEMNITY LIMIT (less any sums already paid) or any lesser sum for which such claim or claims can be settled and upon such payment INSURERS shall not be under any further liability in respect of such claim or claims except for DEFENCE COSTS incurred prior to such payment with INSURERS' prior written consent.

4.5 Several Liability Notice

The subscribing INSURERS' obligations under insurances 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 whatsoever does not satisfy all or part of its obligations.

4.6 Disclaimer of Liability by Insurers

In the event of INSURERS at any time being entitled to avoid this insurance *ab initio* by reason of any materially inaccurate or misleading information given to INSURERS in the written proposal or at any time during the negotiations leading to the inception of this insurance or as a result of failure to disclose material facts before the inception of this insurance or for any other reason at law, INSURERS may at their election instead of avoiding this insurance *ab initio* give notice to the INSURED that they regard this insurance as being of full force and effect except that there shall be excluded from the indemnity provided hereunder any claim which has arisen or which may arise out of any CIRCUMSTANCE which ought to have been disclosed to INSURERS in the written proposal or which arises out of materially inaccurate or misleading information given to INSURERS.

4.7 Data Protection Act

It is understood by the INSURED that any information provided to INSURERS regarding the INSURED will be processed by INSURERS in compliance with the provisions of the Data Protection Acts 1998 and 2003 as replaced, re-enacted, consolidated, extended, revised or amended from time to time whether before or after the date hereof and all subordinate legislation enacted thereunder or under the European Communities Act 1973 relating to Data Protection and any guidance issued by the Data Protection Commissioner (or any official who may succeed either him or her) for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

4.8 Cancellation

This insurance may be cancelled at any time by or on behalf of INSURERS by 60 days' notice given in writing to the INSURED at the INSURED's last known address or registered office (if a company) and the premium shall be adjusted on a pro rata basis.

4.9 Combined claims

Where the same original cause or single source or event gives rise to an entitlement on the part of the INSURED to indemnity under insuring clause 1.1 and any extension(s) under this insurance, the maximum amount payable by INSURERS under insuring clause 1.1 and such extension(s) shall not exceed the INDEMNITY LIMIT.

SPECIMEN

EXCLUSIONS

This insurance shall not indemnify the INSURED in respect of any liability for, or directly or indirectly arising out of, or in any way involving:-

5.1 EXCESS

The EXCESS. DEFENCE COSTS referred to in insuring clause 1.2 shall not be the subject of any EXCESS.

5.2 Liability involving Transport or Property owned by the INSURED

The ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the INSURED or any property of the INSURED.

5.3 Liability arising out of Employment

Any injury, disease, illness (including mental stress) or death of any employee under a contract of service with the INSURED or any claim arising out of any dispute between the INSURED and any present or former employee or any person who has been offered employment with the INSURED.

5.4 Supply of Goods

The manufacture, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including the sale and/or supply of hardware and/or software by the INSURED unless such claim arises directly out of negligent advice, design or specification by the INSURED in the course of the BUSINESS.

5.5 Fraud, Dishonesty or Criminal Act

Any act, error or omission of any partner or director of the INSURED which is dishonest, fraudulent, criminal or malicious, or any claim where any person has committed a dishonest, fraudulent, criminal or malicious act after discovery by the INSURED of reasonable cause for suspicion that such act has been committed.

However, this exclusion shall not apply in respect of any civil claim arising out of any breach of any Irish statutory regulation relating to building or construction works, subject to the act, error or omission not being deliberate on the part of the INSURED.

5.6 Controlling Interest

Any claim made against the INSURED by either:-

5.6.1 any entity in which the INSURED exercises a controlling interest, or

5.6.2 any entity exercising a controlling interest over the INSURED by virtue of having a financial or executive interest in the operation of the INSURED

unless such claim is made against the INSURED for an indemnity or contribution in respect of a claim made by an independent party against the said entities detailed in 5.6.1 or 5.6.2 and arises out of the exercise and conduct of the BUSINESS.

5.7 Contractual Liability for Performance Warranties, Penalty Clauses, COLLATERAL WARRANTIES, DUTY OF CARE AGREEMENTS

Any contractual liability of the INSURED arising from the following:-

5.7.1 any acceptance of or guarantee of fitness for purpose where this appears as an express term

5.7.2 any express guarantee including in relation to the period of a project

5.7.3 any express penalty

5.7.4 any acceptance of liability for liquidated damages

5.7.5 any assignment by the INSURED of a COLLATERAL WARRANTY or DUTY OF CARE AGREEMENT to more than two parties except in respect of a COLLATERAL WARRANTY or DUTY OF CARE AGREEMENT entered into with a funding party

(who is not a purchaser or tenant) where unlimited assignments are permissible

provided that this exclusion shall not apply where the liability of the INSURED would have existed in the absence of any of the above or where INSURERS have expressly approved the relevant terms of the particular contract.

5.8 Nuclear Risks

Any of the following:-

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

5.9 War and Terrorism

Any of the following:-

- 5.9.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority
- 5.9.2 any act or acts of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation
- 5.9.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.9.1 and/or 5.9.2 above.

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

5.10 Area of Activities

Any work or activities undertaken by the INSURED outside the GEOGRAPHICAL LIMITS.

5.11 Jurisdiction

Any claim brought (or the enforcement of any judgement or award entered against the INSURED) in the courts of the United States of America and/or Canada or their Dominions or Protectorates.

5.12 Fines, Penalties, Punitive, Multiple or Exemplary Damages

Fines, penalties, punitive, multiple or exemplary damages, other than in respect of defamation, libel or slander where such have been identified separately within any judgement or award.

5.13 Loss of DOCUMENTS - Magnetic or Electrical Media

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

5.14 POLLUTION

POLLUTION unless it was caused by a negligent act, negligent error or negligent omission by the INSURED and/or by others acting on behalf of the INSURED, provided that such POLLUTION was not caused by an intentional act of the INSURED.

In respect of any claim arising from POLLUTION the INDEMNITY LIMIT shall be amended to “each and every claim and in the aggregate” and not as shown in the SCHEDULE.

Furthermore, for the purposes of this clause only, DEFENCE COSTS shall not be paid in addition to but shall be included within the INDEMNITY LIMIT and shall be subject to the EXCESS shown in the SCHEDULE and not as stated in exclusion 5.1.

5.15 Directors' and Officers' Liability

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

5.16 Other Insurance

Any claim where the INSURED is entitled to indemnity under any other insurance(s) except in respect of any amount for which the INSURED would otherwise be entitled to indemnity under this insurance beyond the amount for which the INSURED is entitled to indemnity under such other insurance.

5.17 Previous Claims and Circumstances

Any claim or circumstance that may give rise to a claim which has been notified and accepted by insurers in respect of any other insurance attaching prior to the inception of this insurance or as disclosed as a material fact to INSURERS which formed the basis of this insurance or any claim or circumstance that may give rise to a claim of which the INSURED was or should have been aware prior to the inception of this insurance.

5.18 Trading Losses

Any trading losses or trading liabilities incurred by any business managed or carried on by the INSURED including loss of any client account or business.

5.19 Failure to Arrange Insurance

Any consequential loss arising from the failure of the INSURED to arrange and/or maintain insurance.

5.20 Asbestos

Any claim involving asbestos.

5.21 Electronic Data Recognition

Any claim:-

- 5.21.1 caused or contributed to by or arising from or in connection with any COMPUTER SYSTEM, whether or not the property of the INSURED, not being YEAR 2000 COMPLIANT, or
- 5.21.2 caused or contributed to by or arising from or in connection with any or any attempted correction, conversion, renovation, rewriting or replacement of any COMPUTER SYSTEM, related to YEAR 2000 COMPLIANCE.

DEFINITIONS AND INTERPRETATIONS

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

6.1 INSURED

Shall mean:-

- 6.1.1 the PRACTICE
- 6.1.2 The present and future partners and present and future directors of the PRACTICE
- 6.1.3 Former partners and former directors of the PRACTICE in respect of claims made during the POLICY PERIOD but arising out of the exercise and conduct of the BUSINESS during the period whilst they were receiving salary or financial benefit from the PRACTICE
- 6.1.4 The estate, heirs and executors of those parties mentioned in 6.1.1 - 6.1.3.

6.2 PRACTICE

Shall mean the professional practices(s) whether corporate, sole trader or partnership named as the INSURED in the SCHEDULE including any predecessors in business.

This also includes any practice(s) or business(es) for which the INSURED is legally liable in consequence of the acquisition of such practice(s) or business(es) prior to inception of this insurance provided INSURERS have been notified in writing of the existence of such other practice(s) or business(es) and INSURERS have agreed to insure such entities.

6.3 BUSINESS

Shall mean advice given and service(s) performed by or on behalf of the INSURED as detailed in the SCHEDULE.

Where the INSURED is liable for a sub-consultant the definition of BUSINESS is extended to include any professional activities of the sub-consultant for which the INSURED is liable.

In addition, the definition of BUSINESS is extended to include personal appointments of any person except the acceptance of any directorship or trusteeship in any other company falling within the definition of the INSURED provided the fees, if any, for such activities are credited to the PRACTICE and such activities are related directly or indirectly to the activities listed in the SCHEDULE and the individual is qualified or experienced to carry out such work.

6.4 INSURERS

Shall mean the insurance companies or Lloyd's syndicates subscribing to this insurance.

6.5 SCHEDULE

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

6.6 INDEMNITY LIMIT

Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of each claim provided always that where more than one claim arises from the same original cause or single source or event all such claims shall be deemed to be one claim and only one INDEMNITY LIMIT shall be payable in respect of the aggregate of all such claims.

6.7 POLICY PERIOD

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

6.8 **DEFENCE COSTS**

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim or CIRCUMSTANCE notified under the terms of this insurance and/or the cost of representation at any enquiry or other proceedings which have a direct or indirect relevance to the investigation, defence or settlement of any matter notified under the terms of this insurance.

6.9 **CIRCUMSTANCE**

Shall mean information or facts or matters of which the INSURED is aware which is likely to give rise to a claim against the INSURED which the INSURED could become legally liable to pay and which arises out of the exercise and conduct of the BUSINESS.

6.10 **DOCUMENTS**

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

6.11 **EXCESS**

Shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and shall be the first amount of each claim which is payable by the INSURED. Where, however, more than one claim is made during the POLICY PERIOD which arises from the same original cause or single source or event then only a single EXCESS shall apply in respect of such claims.

6.12 **LETTER OF CLAIM**

Shall mean the Letter of Claim as detailed in any applicable Pre-Action Protocol.

6.13 **CO-OPERATE**

Shall mean that the INSURED

- 6.13.1 assists INSURERS and their duly appointed representatives to put forward the best possible defence of a claim within the time constraints available
- 6.13.2 shall have adequate internal systems in place, which will allow ready access to material information
- 6.13.3 shall at all times and at its own cost give to INSURERS or their duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Civil Procedure Rules, Practice Directions and Pre-Action Protocols and recoveries.
- 6.13.4 shall pay the EXCESS on demand of INSURERS or their duly appointed representatives to comply with any settlement agreed by INSURERS.

6.14 **COLLATERAL WARRANTIES, DUTY OF CARE AGREEMENTS**

Shall mean any agreement which acknowledges or accepts that the INSURED owes a duty of care to or is responsible for the losses of any party other than the INSURED's direct client to whom services are being provided.

6.15 **GEOGRAPHICAL LIMITS**

Shall mean anywhere in the world excluding the United States of America and/or Canada or their Dominions or Protectorates or as varied in the SCHEDULE.

6.16 **POLLUTION**

Shall mean any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing HARM to any person or any living organism, into or onto any water, land or air.

6.17 HARM

Shall mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, shall include offence caused to any of their senses.

6.18 COMPUTER SYSTEM

Shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.

6.19 YEAR 2000 COMPLIANT/COMPLIANCE

Shall mean that neither performance nor functionality of the COMPUTER SYSTEM is affected by any changes prior to, during and/or after, the Year 2000. In particular:-

- 6.19.1 No value for current date will cause or give rise to any interruption in the operation of the COMPUTER SYSTEM
- 6.19.2 Date based functionality and performance must behave consistently for dates prior to, during and/or after, the Year 2000
- 6.19.3 In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules
- 6.19.4 The Year 2000 must be recognised as a leap year.

SPECIMEN

SCHEDULE

Policy Number:

1. The INSURED:

2. Principal Address of the INSURED:

3. BUSINESS: As described in the proposal form

4. POLICY PERIOD: From : To:
Both days inclusive Greenwich Mean Time

5. INDEMNITY LIMIT: €

6. EXCESS: €

6. GEOGRAPHICAL LIMITS:

7. Conditions: As per policy wording plus:-

8. Retroactive Date:

9. Premium: €

Government Levy: €

Total Premium: € (Including Government levy)

10. Date(s) of proposal form(s): This insurance is based on the proposal form(s) the dates of which is/are listed below and supporting documentation (if any) accompanying the proposal form Proposal form(s)

11. Notice of any claim or CIRCUMSTANCE is to be given to: W.R. Berkley Insurance (Europe), Limited
6th Floor, 40 Lime Street

London EC3M 7AW
Tel: 020 7280 9000
Fax: 020 7280 9090