

## **EXPRESS REGISTERED HEALTH PRACTITIONERS COMBINED PI/PL/Products LIABILITY INSURANCE**

### **IMPORTANT INFORMATION**

**Please read the following information**

#### **A. Your Duty of Disclosure**

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

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

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

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

#### **Non-disclosure**

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

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

#### **B. Claims Made and Notified Policy**

Section 2 of this policy provides Professional Indemnity Insurance on a "Claims Made and Notified" basis. This means that the policy covers you for claims made against you and notified to the insurer during the period of cover. It does not provide cover for:

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

## **C. Subrogation Agreements**

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

## **D. Privacy Statement**

The Privacy Act 1988 (as amended) applies to this insurance and requires us to advise you that:

### **Purpose of collection**

Berkley Insurance Australia collects personal information (this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person) for the purposes of:

- providing insurance services to you;
- evaluating your application;
- evaluating any request for changes to any insurance provided;
- issuing, administering and managing the insurance provided after acceptance of an application;
- investigating and, if covered, managing claims made in relation to any insurance you have with us.

The personal information collected can be used or disclosed by us for secondary purposes related to those purposes listed above, but only if you would expect us to use or disclose the information for such secondary purpose. However, for sensitive information the secondary purpose must be directly related to the purposes listed above.

### **Disclosure**

When necessary and in connection with the purposes listed above Berkley Insurance Australia may disclose your personal information to and/or receive information from other companies within the same group, your insurance broker or our agent, government bodies, loss assessors, claim investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers.

### **Consequences if information is not provided**

If you do not provide us with the information we need we will be unable to consider your application for insurance cover, administer your policy or manage any claim under your policy.

### **Access**

You may request access to the personal information we hold about you by contacting Berkley Insurance Australia at the address shown.

### **Contact Details**

Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)

Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

Level 23  
31 Market Street  
Sydney NSW 2000  
Ph: 02 9275 8500

Level 7  
300 Ann Street  
Brisbane Qld 4000  
Ph: 07 3220 9900

Level 8  
454 Collins Street  
Melbourne Vic 3000  
Ph: 03 8319 4080

## COMBINED PI/PL/Products LIABILITY INSURANCE

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## **COMBINED PI/PL/Products LIABILITY INSURANCE**

### **SECTION 1: PREAMBLE**

In consideration of the INSURED having agreed to pay the premium shown in the SCHEDULE, WE agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this policy.

### **SECTION 2: PROFESSIONAL INDEMNITY**

#### **THIS IS A CLAIMS MADE AND NOTIFIED SECTION OF THE POLICY**

### **SECTION 2.1 INSURING CLAUSE**

WE shall indemnify the INSURED, up to the LIMIT OF INDEMNITY, for the amount of any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD, in respect of any civil liability to pay COMPENSATION which arises out of a breach of professional duty in the exercise and conduct of the INSURED's HEALTH PROFESSION.

### **SECTION 2.2 AUTOMATIC EXTENSIONS**

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

#### **2.1 Breach of Contract**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD, in respect of CONTRACTUAL LIABILITY based upon or arising from breach of the INSURED's professional duty in the exercise and conduct of the INSURED'S HEALTH PROFESSION.

#### **2.2.2 Trade Practices Act and other Legislation**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which arises out of conduct done in contravention of the Trade Practices Act 1974, or any State or Territory Fair Trading Act but only where such conduct:

- i) constitutes a contravention of such statute because it:
  - (a) is misleading or deceptive or likely to mislead or deceive;
  - (b) is the making of a false or misleading representation;
  - (c) is unconscionable; or
  - (d) is in breach of a warranty implied into a contract for the provision of services by any of the above Acts; AND
- ii) is not intentional; AND
- iii) arises from or as a consequence of the exercise and conduct of the INSURED's HEALTH PROFESSION.

#### **2.2.3 Loss of or Damage to Documents**

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

The cover provided by this extension is not subject to Insuring Clause 2.1

#### **2.3.4 Indemnity to Present or Former Partners, Principals, Directors and Employees**

Present and former partners, principals, directors and employees of the INSURED are indemnified for any CLAIM first made against them and notified to US during the POLICY PERIOD which arises out of the exercise and conduct of the INSURED's HEALTH PROFESSION.

### **2.3.5 Dishonesty**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which arises out of the exercise and conduct of the INSURED's HEALTH PROFESSION brought about, or contributed to, by the dishonest, fraudulent, criminal or malicious act or omission of the INSURED provided that:

- (a) there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on behalf of the person concerned;
- (b) there is no indemnity for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
- (c) there is no indemnity in respect of such loss or CLAIM shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- (d) the INSURED shall, at OUR request and expense take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- (e) any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance;
- (f) the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent criminal or malicious act or omission or their estates or legal personal representatives;
- (g) nothing herein shall preclude US from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

### **2.3.6 Defamation, Libel and Slander**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD in direct consequence of any defamation, libel or slander by the INSURED which arises in the exercise and conduct of the INSURED's HEALTH PROFESSION.

### **2.3.7 Infringement of Intellectual Property Rights**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which the INSURED may become legally liable to pay as a result of an inadvertent infringement or alleged infringement, plagiarism or breach of confidentiality of another party's INTELLECTUAL PROPERTY RIGHTS which arises out of the exercise and conduct of the INSURED's HEALTH PROFESSION.

### **2.3.8 Contractors – Vicarious Liability only**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which the INSURED may become legally liable to pay arising out of the conduct of any CONTRACTOR, but only to the extent that such conduct by the CONTRACTOR was on behalf of the INSURED in the exercise and conduct of the INSURED's HEALTH PROFESSION.

### **2.3.9 Severability**

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

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

Provided always that:

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

#### **2.2.10 Newly Created or Acquired Subsidiaries**

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

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

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

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

#### **2.2.11 Public Relations**

The INSURED is indemnified for any PUBLIC RELATIONS EXPENSES incurred arising out of an INCIDENT occurring during the POLICY PERIOD:

- in order to prevent or minimise the risk of a CLAIM; or
- that results in a CLAIM;

that would be covered under this policy.

The amount that WE will indemnify the INSURED for under this extension is \$50,000 any one INCIDENT and in the aggregate for all INCIDENTS including DEFENCE COSTS which is part of and not in addition to the LIMIT OF INDEMNITY.

INCIDENT means an event which causes the INSURED's reputation and skill in the conduct of their business to be publicly brought into question.

#### **2.2.12 Heirs, Estates and Legal Representatives**

WE agree to include in the definition of the INSURED the estate, heirs, legal representatives or assignees of the INSURED in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such INSURED in respect of any civil liability of the INSURED that would have been covered by Clause 2.1 if the INSURED was alive, had capacity or was not insolvent or bankrupt PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this policy insofar as they can apply.

### **2.3.13 Run-Off Cover**

The INSURED is indemnified for any CLAIM including DEFENCE COSTS against the INSURED as a Retired REGISTERED HEALTH PRACTITIONER for which the INSURED becomes legally liable provided that the CLAIM:

- a) arises out of any act, error, omission or conduct which occurred after the RETROACTIVE DATE and before or during the POLICY PERIOD when the Retired REGISTERED HEALTH PRACTITIONER was covered under this Policy; and
- b) was made against the Retired REGISTERED HEALTH PRACTITIONER after ceasing to practice in the INSURED's HEALTH PROFESSION and further provided that immediately prior to the Retired Registered Health Practitioner was covered by this policy;
- c) the coverage provided by this policy, with respect to such INSURED, shall continue for six years (2190 days) from the expiry date of the POLICY PERIOD stated in the schedule.

### **2.3.14 Enquiry Costs**

The INSURED is indemnified for reasonable legal costs and expenses incurred by US for representation at any enquiry or other proceedings which have a material effect on the defence of any CLAIM covered by Insuring Clause 2.1 however the amount payable in regards to representation at any enquiry or other proceedings is limited to \$1,000,000 in the aggregate or the amount of the LIMIT OF INDEMNITY whichever is the lesser.

The cover provided by this extension is not subject to Insuring Clause 2.1.

### **2.3.15 Emergency First Aid**

The cover provided by this policy shall extend to any CLAIM up to the LIMIT of INDEMNITY first made against the INSURED during the POLICY PERIOD in respect of the INSURED's civil liability for compensation arising from medical assistance voluntarily administered, or the failure to provide medical assistance, at the scene of any emergency, accident or disaster by the INSURED provided that the assistance or failure to provide assistance is given at a time when the INSURED is not engaged in a professional capacity by any other person or entity.

The cover provided by this extension is not subject to Insuring Clause 2.1

### **2.3.16 Molestation Defence and Enquiry Costs**

Notwithstanding exclusion 8.31 Fraud, Dishonesty or Criminal Act, WE agree to advance periodical DEFENCE COSTS up to the limit specified within this clause to the INSURED upon notification to US during the POLICY PERIOD of a CLAIM alleging MOLESTATION which arises out of the INSURED'S HEALTH PROFESSION or until such time as it may be determined (if at all) that the INSURED has been in breach of their professional bodies Code of Ethics or Ethical Guidelines or that it is found the CLAIM is not covered by this policy, whichever occurs sooner.

Whether or not there has been a breach/es of the Professional Bodies Code of Ethics or Ethical guidelines shall be determined by US in OUR absolute discretion.

It is a condition of this extension that WE, in providing cover under this extension, may recover from the INSURED any DEFENCE COSTS advanced to them if it is subsequently determined that the INSURED had in fact breached the Professional Bodies Code of Ethics or that such CLAIM would have not otherwise been covered by the policy.

OUR total liability under this clause shall not exceed \$100,000 in the aggregate during the POLICY PERIOD.

### **2.3.17 Continuous Coverage**

The cover provided by this policy shall extend to any CLAIM arising from any fact, matter or circumstance known to the INSURED, at any time prior to the inception of this policy, and which the INSURED knew or a reasonable person in the INSURED'S profession could, in the circumstances, be expected to know might give rise to a CLAIM against the INSURED provided always that:



- (a) WE were the professional indemnity insurer of the INSURED when the INSURED first became aware of such fact, matter or circumstance; and
- (b) WE continued without interruption to be the professional liability indemnity insurer of the INSURED from the time mentioned in paragraph 2.2.15 (a) above up until this policy came into effect; and
- (c) had WE been notified by the INSURED of such fact, matters or circumstance when the INSURED first became aware of it, the INSURED would have been covered under the policy in force at that time but is not now entitled to be covered by that policy because it did not notify the fact, matter or circumstance; and
- (d) neither the CLAIM nor the fact, matter or circumstance has previously been notified to US or to any other insurer. If the INSURED was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Cover extension does not apply; and
- (e) the INDEMNITY LIMIT provided for CLAIMS covered by this Extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (c) above, or under this policy. The terms of this policy otherwise apply,
- (f) such indemnity shall not apply to any CLAIM where the INSURED's failure to notify is fraudulent.

The INSURED agrees to only make a CLAIM under one professional liability policy issued by US and WE may reduce its liability under the POLICY to the extent of any prejudice it suffers in connection with the INSURED's failure to notify the circumstance prior to the POLICY PERIOD.

### **2.3.18 Reinstatement of the Limit of Indemnity**

If the LIMIT OF INDEMNITY is partially reduced or exhausted by any CLAIM or DEFENCE COSTS then WE agree to reinstate the LIMIT OF INDEMNITY for any CLAIMS covered by Section 2 of this policy and associated DEFENCE COSTS that are totally unrelated or unconnected to the CLAIM that reduced or exhausted the LIMIT OF INDEMNITY, provided always that in the aggregate for all CLAIMS and DEFENCE COSTS (subject to whether the DEFENCE COSTS are inclusive or in addition as per Clause 1.2) WE shall be liable for no more than three times the INDEMNITY LIMIT.

### **2.3.19 Teachers Liability**

The INSURED is indemnified for any CLAIM first made against the INSURED and notified to US during the POLICY PERIOD which arises out of the exercise and conduct of the INSURED's HEALTH PROFESSION's by the INSURED as a teacher.

However, WE shall not be liable in respect of any CLAIM or ENQUIRY COSTS resulting from any act, error or omission where the students were not under any supervision of the INSURED at the time such act, error or omission was alleged to have been committed



## **SECTION 3: PUBLIC AND PRODUCTS LIABILITY**

**THIS IS AN OCCURRENCE BASED SECTION OF THE INSURANCE POLICY**

### **SECTION 3.1: PUBLIC LIABILITY**

#### **SECTION 3.1.1 – INSURING CLAUSE**

WE will indemnify the INSURED, up to the LIMIT OF INDEMNITY, in respect of the INSURED's civil liability to pay COMPENSATION arising out of

- 1) BODILY INJURY to any person
- 2) DAMAGE to PROPERTY

occurring during the PERIOD OF INSURANCE within the TERRITORIAL LIMITS and arising from and in the course of the INSURED's HEALTH PROFESSION.

#### **SECTION 3.1.2 AUTOMATIC EXTENSIONS**

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

##### **3.1.3 Motor Vehicles**

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

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

Provided always that WE shall not provide indemnity against liability

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

##### **3.1.4 Leased or Rented Premises**

Exclusion 8.19(b) shall not apply to liability for DAMAGE to premises (including their fixtures and fittings) leased or rented to the INSURED for the purpose of the INSURED'S HEALTH PROFESSION provided always that WE shall not provide indemnity against

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

##### **3.1.5 Buildings Temporarily Occupied**

Exclusion 8.19(b) shall not apply to liability for DAMAGE to buildings (including contents therein) which are not owned leased or rented by the INSURED but are temporarily occupied by the INSURED for the purpose of maintenance, alteration, extension, installation or repair.

## **SECTION 3.2 PRODUCTS LIABILITY**

### **SECTION 3.2.1 – INSURING CLAUSE**

WE will indemnify the INSURED, up to the LIMIT OF INDEMNITY, in respect of the INSURED's civil liability to pay COMPENSATION arising out of

- 1) BODILY INJURY to any person; or
- 2) DAMAGE to PROPERTY

occurring during the PERIOD OF INSURANCE within the TERRITORIAL LIMITS and caused by any product supplied in the course of the INSURED's HEALTH PROFESSION.

### **3.2.2 AUTOMATIC EXTENSIONS TO SECTIONS 3.1.1 AND 3.2.1**

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

#### **3.2.3 Costs of Court Attendance**

In the event of any of the under-mentioned persons attending court as a witness at OUR request in connection with a CLAIM in respect of which the INSURED is entitled to indemnity under this POLICY, WE will reimburse the INSURED at the rate of \$650 per day for each day on which attendance is required.

#### **3.2.4 Indemnity to Other Persons**

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

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

Provided always that

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

#### **3.2.5 Cross Liabilities**

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

#### **SECTION 4: DEFENCE COSTS AND EXPENSES**

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

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

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

#### **SECTION 5: LIMIT OF INDEMNITY**

The LIMIT OF INDEMNITY in relation to sections 2, 3.1 and 3.2 apply to that section only and, for the purposes of Sections 2 and 3.2, the LIMIT OF INDEMNITY is to be applied as an aggregate limit in respect of the sum total of all CLAIMS notified during the POLICY PERIOD.

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

#### **SECTION 6: CLAIMS CONDITIONS**

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

##### **6.1 Discovery of a Claim**

If during the POLICY PERIOD the INSURED receives notice of any CLAIM that is indemnifiable under this insurance the INSURED shall give notice to US as soon as practicable.

##### **6.2 Admission of Liability**

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

##### **6.3 Conduct of Claims**

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

##### **6.4 Claim Settlements**

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

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

In the event that:

6.4.1 WE have made a payment in excess of the amount for which WE would otherwise have been liable in accordance with the policy in respect of such CLAIMS the INSURED shall refund to US that proportion of the payment which exceeds the amount which WE would otherwise have been liable for in accordance with the policy.

6.4.2 WE have agreed to pay an amount in excess of the amount which WE would otherwise have been liable for in accordance with the policy in respect of such CLAIM(S), OUR liability in respect of such agreement shall be limited to the amount which WE would otherwise have been liable for in accordance with the policy.

#### **6.5 EXCESS**

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

#### **6.6 OUR and the Insured's Right to Defend**

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

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

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

### **SECTION 7: GENERAL CONDITIONS**

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

#### **7.1 Jurisdiction and Service**

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

Any originating legal process and all interlocutory proceedings in connection with any such dispute may be served upon:

National Head of Claims

[australiacclaims@berkleyinaus.com.au](mailto:australiacclaims@berkleyinaus.com.au)

Berkley Insurance Australia

PO Box Q296

QVB NSW 1230

#### **7.2 Terms of Payment**

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

#### **7.3 Cancellation**

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

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

In any event WE are entitled to retain a minimum premium of \$100.00 in the event of cancellation by the INSURED.

#### **7.4 Subrogation**

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

## **SECTION 8: EXCLUSIONS**

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

### **8.1 Previously Known Claim or Circumstance**

8.1.1 any CLAIM actually made upon the INSURED prior to the inception of this POLICY;

8.1.2 any fact, matter or circumstance known to the INSURED, at any time prior to the inception of this POLICY, and which the INSURED knew or a reasonable person in the INSURED's profession could, in the circumstances, be expected to know or have known might give rise to a CLAIM against the INSURED ;

8.1.3 any fact, matter or circumstance notified by the INSURED to any prior insurer, for the purpose of attaching coverage under an earlier policy to any CLAIM(S) which might arise out of it.

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

### **8.2 Trading Losses and Insolvency**

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

8.2.2 the insolvency of the INSURED.

### **8.3 Nuclear Risks**

any of the following:-

8.3.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

8.3.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **8.4 War and Terrorism**

any of the following:-

8.4.1 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation, or nationalisation, or requisition, or destruction of or damage to property by or under the order of any government or public or local authority;

8.4.2 any act or ACT OF TERRORISM, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation

8.4.3 any action taken in controlling, preventing, suppressing or in any way relating to 8.4.1 or 8.4.2 above.

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

### **8.5 USA/Canada**

8.5.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates, or any judgement registered or lodged in connection with such an action; or

8.5.2 any work or activities undertaken by the INSURED in the United States of America, Canada or their dominions or protectorates.

8.5.3 any product supplied by the INSURED which to the knowledge of the INSURED is for use in or supply to the United States of America or Canada.

### **8.6 Product Supplied under the Insured's Control**

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

### **8.7 Loss of DOCUMENTS - Magnetic or Electrical Media**

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

## **8.8 Liability arising out of Employment**

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

## **8.9 Directors' and Officers' Liability**

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

## **8.10 Retroactive Date**

the exercise and conduct of the INSURED'S HEALTH PROFESSION prior to any RETROACTIVE DATE specified in the SCHEDULE. This exclusion only applies to Section 2 of the policy.

## **8.11 Contractual Liability**

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

## **8.12 Extensions**

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

- 8.12.1 the Trade Practices Act 1974, Australian Securities and Investments Act 2001 or any State or Territory Fair Trading Act , except as covered under Automatic Extension 2.2.2;
- 8.12.2 physical loss of or damage to DOCUMENTS except as covered by Automatic Extension 2.2.3;
- 8.12.3 any conduct, act, error or omission of any person which is dishonest, fraudulent, criminal or malicious act except as covered by Automatic Extension 2.2.4;
- 8.12.4 any infringement or alleged infringement of any copyright or patents or other intellectual property rights, except as covered by Automatic Extension 2.2.7;
- 8.12.5 any newly created or acquired subsidiaries except as covered by Automatic Extension 2.2.11; or
- 8.12.6 an insured entity or subsidiary which ceases to exist or operate or is consolidated with, merged into or acquired by any other entity except as covered by Automatic Extension 2.2.12.

*Exclusion 8.12.6 shall not apply to Section 3 of the policy.*

## **8.13 Refund of Professional Fees**

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

## **8.14 Associated Companies**

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

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

## **8.15 Asbestos or Toxic Mould**

asbestos or toxic mould.



#### **8.16 Pollution or Contamination**

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

- (a) all POLLUTION or CONTAMINATION which arises out of such incident shall be deemed to have occurred at the time such incident takes place; and
- (b) OUR liability for all COMPENSATION under Sections 3.1.1 or 3.2.1 payable in respect of all POLLUTION or CONTAMINATION which is deemed to have occurred during PERIOD OF INSURANCE shall not exceed in the aggregate the LIMIT OF INDEMNITY for Section 3.1.1 (or Section 3.2.2 if Section 3.1.1 is not operative).

*The above exclusion 8.16.1 shall not apply to Section 2 of the policy.*

#### **8.16.2 POLLUTION or CONTAMINATION.**

*The above exclusion 8.16.2 shall not apply to Section 3 of the policy.*

#### **8.17 Motor Vehicle, Aircraft and Watercraft**

the ownership possession or operation by or on behalf of the INSURED of any:

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

#### **8.19 Damage to Property**

DAMAGE to PROPERTY

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

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

#### **8.20 Recall, Repair or Replacement**

the costs or expenses of recalling, repairing, replacing, altering, removing, rectifying, reinstating or making any refund in respect of any advice, services or products provided and or supplied by or the INSURED.

#### **8.21 Property Damage**

8.21.1 any BODILY INJURY to any person or loss of or DAMAGE to PROPERTY which is attributable to the supply or provision of advice or services in respect of any product unless a CLAIM arises out of a breach of professional duty; or

8.21.1 loss of or DAMAGE to PROPERTY which is attributable to the supply or provision of advice or services in respect of any product.

*Exclusion 8.21.1 shall not apply to Section 3 of this policy, nor to Automatic Extension 2.2.3.*

#### **8.22 Excluding services or advice not in conjunction with Products**

any breach of professional duty in respect of advice or services other than where such advice or services are provided in respect of any product.

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



**8.23 Aviation and Marine Products**

any products which, to the knowledge of the INSURED, are for

- (a) use in or on any aircraft or aero spatial device
- (b) aviation or aero spatial purposes
- (c) use in the safety or navigation or navigation of marine craft of any sort.

*This exclusion shall only apply to Section 3.2 of this policy.*

**8.24 Products Liability**

any products except in circumstances where BODILY INJURY or DAMAGE to PROPERTY occurs as a result of such product being in the custody or control of the INSURED.

*This exclusion shall only apply to Section 3.1 of this policy.*

**8.25 Obstetrics and/or Midwifery Exclusion**

the provision of or the failure to provide obstetric services and/or the practice of midwifery.

**8.26 Spinal Manipulation**

any manipulation or adjustment of the spine whilst under general anaesthetic.

**8.27 Intoxicants and Drugs**

any services rendered by any person while that person is under the influence of intoxicants or drugs or from any failure to render services competently or at all because of such influence, if such services were performed with the knowledge or connivance of a principal, partner or director of the INSURED.

**8.29 Molestation**

any actual or alleged act of molestation or physical interference with any person.

**8.30 Provision of Medication**

the administration or provision of medicines which, by law are required to be prescribed by a MEDICAL PRACTITIONER, unless the medicine provided has been so prescribed.

**8.31 Fraud, Dishonesty or Criminal Act**

any act, error or omission of any person which is dishonest, fraudulent, criminal or malicious.

**8.32 Medical Practitioners Activities**

any liability at law of a MEDICAL PRACTITIONER to a patient, where such liability arises directly from the MEDICAL PRACTITIONER including, but not limited to diagnosis, treatment, medical advice, prescribing or supplying medical or a breach of any State or Federal health or medical laws or regulations in force in Australia and its external territories, however this Exclusion will not exclude the vicarious liability which may attach to:

- a) the INSURED; or
- b) any principal of the INSURED whilst acting in the capacity other than as a MEDICAL PRACTITIONER.

**8.33 Health Care/Skin Penetration**

any service rendered arising out of the INSURED's failure to comply with the following health care conditions:

- a) hypodermic needles are used only once and thereafter disposed of;
- b) all instruments used to penetrate the skin or used in oral examination must be sterile in accordance with accepted Commonwealth and/or State Health Department procedures;
- c) any surface which has received spillage of human or animal body fluid shall be thoroughly cleansed by a process as laid down from time to time by the respective State Health Regulations and/or Commonwealth Health Regulations.

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

## **SECTION 9: DEFINITIONS AND INTERPRETATIONS**

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

### **9.1 ACT OF TERRORISM**

Shall mean the actual or threatened

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

### **9.2 BODILY INJURY**

Shall mean bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental Injury but not defamation, libel, slander, deceit or injurious falsehood, discrimination or advertising injury.

### **9.3 CLAIM**

9.3.1 for the purposes of Section 2 shall mean:

- (a) any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the INSURED claiming damages or other compensatory remedy; or
- (b) the positive assertion in writing of a legal entitlement to damages or other compensatory remedy in connection with an alleged civil liability on the part of the INSURED, in terms evincing an intention to pursue it;

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

### **9.4 CONTRACTUAL LIABILITY**

Shall mean liability which attaches by virtue of a contract or agreement but only to the extent to which it would have attached in the absence of such contract or agreement.

### **9.5 COMPENSATION**

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

### **9.6 CO-OPERATE**

Shall mean that the INSURED:

- 9.6.1 assists US and OUR duly appointed representatives to put forward the best possible defence of a CLAIM within the time constraints available;
- 9.6.2 shall have adequate internal systems in place, which will allow ready access to material information; and
- 9.6.3 shall at all times and at its own cost give to US or OUR duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

### **9.7 DAMAGE**

Shall mean loss of or damage to PROPERTY

### **9.8 DEFENCE COSTS**

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

- (i) any claim brought, or which may be brought, against the INSURED in relation to any matter which may be the subject of indemnity under Section 3 of this POLICY; or
- (ii) any CLAIM in respect of which WE are liable to indemnify the INSURED under Section 2 of this POLICY.

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

#### **9.9 DOCUMENTS**

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

#### **9.10 EMPLOYEE**

Shall mean

- (a) any person under a contract of service or apprenticeship with the INSURED
- (b) any self-employed person or contractor hired by the INSURED
- (c) any person engaged under a work experience government training or similar scheme whilst working for the INSURED in connection with the INSURED'S HEALTH PROFESSION.

#### **9.11 EXCESS**

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

#### **9.12 INSURED'S HEALTH PROFESSION**

Shall mean the HEALTH PROFESSION as described in the SCHEDULE provided that such description shall at all times be interpreted by reference to the advice, services or products declared in the INSURED's proposal and those activities accepted by US and shall for the purposes of Section 3.1 and 3.2 include

- (a) the provision and management of catering social sports educational medical dental and welfare organisations for the benefit of the INSURED'S EMPLOYEE'S and fire security first aid and ambulance services; and
- (b) the ownership repair maintenance and decoration of the INSURED's premises;
- (c) private work carried out by any EMPLOYEE of the INSURED (with the consent of the INSURED) for any director partner or senior official of the INSURED.

#### **9.13 INSURED**

Shall mean the

- (a) person(s), partnership, company or other entity named as the INSURED in the SCHEDULE including any predecessors in business named in the proposal submitted to US; and
- (b) natural person who is a past and/or present Student, Volunteer, Committee Member or Council Member, but only in their capacity as such and provided always that they are under the direction and control of the INSURED and only to the extent the civil liability results from the conduct of the HEALTH PROFESSION.

#### **9.14 INTELLECTUAL PROPERTY RIGHTS**

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

#### **9.15 LIMIT OF INDEMNITY**

Shall mean the sum shown in the SCHEDULE.

#### **9.16 MEDICAL PRACTITIONER**

Shall mean a medical practitioner or dentist.

**9.17 POLICY PERIOD**

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

**9.18 POLLUTION or CONTAMINATION**

Shall mean the discharge dispersal release or escape of smoke vapours soot fumes acids alkalis toxic chemicals liquids or gases waste materials or other irritants contaminants or pollutants into or upon buildings or structures or of water or land or the atmosphere and all DAMAGE to PROPERTY or BODILY INJURY directly or indirectly caused by or arising from such pollution or contamination as described above

**9.19 PRINCIPAL**

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

**9.20 PROPERTY**

Shall mean tangible property.

**9.21 RETROACTIVE DATE**

Shall mean the date noted in the SCHEDULE.

**9.22 REGISTERED HEALTH PRACTITIONER**

Shall mean a person registered under the Health Practitioner Regulation National Law to practice as a health profession

**9.23 SCHEDULE**

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

**9.24 TERRITORIAL LIMITS**

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

**9.25 WE, US, OUR**

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