

Miscellaneous Professions Professional Indemnity Insurance Wording

Wording Document

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Miscellaneous Professions Professional Indemnity Insurance

Important Information

The Important Information detailed in A to E below is for your information only. It does not form part of the insurance contract with you, and does not impose contractual obligations on you, or create contractual rights.

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 (Cth), 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 business, 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 Policy

This policy provides Professional Indemnity insurance on a "Claims Made" basis. This means that the policy covers you for Claims made against you 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. Average Provision

Section 1.2 of the policy provides that if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Berkley Insurance Australia's liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim.

E. Privacy

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

Disclosure of Information that you provide to us

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

Cross Border

We will share Your personal information with the Berkley group of companies. Our data containing Your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on our website www.berkleyinaus.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to australiacclaims@berkleyinaus.com.au.

Contact Details

Berkley Insurance Australia
Level 23, 31 Market Street
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Ph: 02 9275 8500
Fax: 02 9261 2773
Email: australia@berkleyinaus.com.au
Web site: www.berkleyinaus.com.au

Miscellaneous Professions Professional Indemnity Insurance

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Miscellaneous Professions Professional Indemnity Insurance

This is a claims made and notified insurance policy.

1. Insuring Clauses

1.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Policy Period arising out of the conduct of the Professional Business.

1.2 Defence Costs

We will also indemnify the Insured for 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 will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim including the claimant's legal costs and expenses.

2. Automatic Extensions

We will provide the following cover,
PROVIDED ALWAYS THAT:

- a) the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- b) the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

2.1 Competition and Consumer Act and other Legislation

Insuring Clause 1.1 provides cover for any Claim which arises out of conduct in contravention of the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or any State or Territory Fair Trading Act but only where such conduct:

- 2.1.1 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
- 2.1.2 is not intentional.

2.2 Loss of or Damage to Documents

We will indemnify the Insured for reasonable and necessary costs and expenses incurred by the Insured (although not the Insured's own time) in replacing, restoring or reconstituting Documents due to a physical loss of or damage to such Documents that are the property of the Insured or are in the Insured's care, custody or control in the conduct of the Professional Business and where such loss or damage is discovered and is notified to Us during the Policy Period.

The cover provided by this extension is not subject to

Insuring Clause 1.1 or Exclusion 6.11.

The maximum aggregate amount payable under this extension is \$500,000.

2.3 Dishonesty of Insured Persons

Insuring Clause 1.1 provides cover for any Claim brought about, or contributed to, by any dishonest, fraudulent, criminal or malicious act or omission of any Insured person, PROVIDED ALWAYS THAT:

- 2.3.1 We will not indemnify the Insured in respect of 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 the part of the person concerned;
- 2.3.2 We will not indemnify the Insured in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;
- 2.3.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.4 We will not indemnify the Named Insured where any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission is a sole principal or director of the Named Insured;
- 2.3.5 We will not indemnify the Named Insured where all principals, partners or directors of the Named Insured are persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.6 the Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.7 We will deduct from any amount payable under this extension 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;

- 2.3.8** We will only be liable to indemnify the Insured for the balance of loss sustained 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;
- 2.3.9** Dual Sign Off was required for any withdrawal of funds from any bank or trust account operated by the Insured at the time the dishonest or fraudulent act or omission occurred;
- 2.3.10** if the dishonest or fraudulent act or omission is in connection with a trust account then the Insured's trust account must have been independently audited on an annual basis at the time of the dishonest or fraudulent act or omission; and
- 2.3.11** nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

"Dual Sign-Off" in this extension means that any cheque payment or electronic money transfer receives prior approval by at least two approved signatories; and that the person reconciling the Insured's bank statements being a different person to the one that operates those bank accounts.

The cover provided by this extension is not subject to Exclusion 6.16.

2.4 Fiduciary Duty

Insuring Clause 1.1 provides cover for any Claim in direct consequence of a breach of fiduciary duty owed by the Insured to a client or customer of the Named Insured.

2.5 Defamation, Libel and Slander

Insuring Clause 1.1 provides cover for any Claim made as a direct consequence of any inadvertent defamation, libel or slander by the Insured arising out of the conduct of the Professional Business.

2.6 Infringement of Copyright or Patents

Insuring Clause 1.1 provides cover for any Claim made as a direct consequence of any inadvertent infringement or alleged inadvertent infringement of any copyright, patents or other intellectual property rights arising out of the conduct of the Professional Business.

The cover provided by this extension is not subject to Exclusion 6.18.

2.7 Newly Created or Acquired Subsidiaries

We will indemnify, in the same manner and to the same extent as the Named Insured, any entity or subsidiary acquired or created by the

Named Insured during the Policy Period, PROVIDED ALWAYS THAT:

- 2.7.1** the Policy Period applicable to such cover will be the period commencing on the date of such acquisition or creation and expiring twenty-eight (28) days after that date or on the expiry date of the Policy Period (whichever is the earlier);
- 2.7.2** the retroactive date applicable to such cover will be the date of acquisition or creation of the entity or subsidiary; and
- 2.7.3** the Claim arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the Named Insured's Professional Business.

Note: The Named Insured may apply to Us within twenty-eight (28) days of this extension being triggered to vary the policy to continue the cover provided by this extension until the expiry date of the Policy Period by notifying Us of the acquisition or creation of the entity or subsidiary and providing all information requested by Us. Any such variation will only be offered by Us at Our sole and absolute discretion and subject to any additional terms imposed including the charging of any additional premium which it considers appropriate.

2.8 Fines and Penalties

We will indemnify the Insured for Fines or Penalties arising from any Claim first made against the Insured during the Policy Period, PROVIDED ALWAYS THAT:

- 2.8.1** the conduct giving rise to the Claim was not intentional, wilful, reckless or deliberate;
- 2.8.2** indemnification is permitted at law;
- 2.8.3** We will not indemnify the Insured for Fines and Penalties imposed in connection with any requirement to pay taxes, rates, duties, levies, charges, fees or other revenue charge or impost; and
- 2.8.4** the maximum aggregate amount payable under the policy in respect of all Claims for Fines and Penalties and Defence Costs in connection with such Claims is \$250,000.

The cover provided by this extension is not subject to Exclusion 6.3 or Exclusion 6.6.

2.9 Appointed Sub-Consultants

- 2.9.1** Insuring Clause 1.1 provides cover for any Claim against the Insured in respect of the Insured's civil liability directly arising out any act, error or omission of any appointed sub-consultant in the conduct of the Professional Business.

- 2.9.2** We will indemnify any appointed sub-consultant as if they were an employee of the Named Insured, PROVIDED ALWAYS THAT:
- a) at least 90% of such sub-consultant's income in the previous twelve (12) months to the inception date of this policy, or reasonably anticipated in the next twelve (12) months, is derived from the Named Insured;
 - b) such sub-consultant at the time the conduct that gave rise to the Claim was acting under the direct control of a principal, partner, director or employee of the Named Insured and in accordance with the Named Insured's standard operating and risk management procedures; and
 - c) cover afforded under this extension will only apply in respect of an act, error or omission of the sub-consultant in the conduct of the Professional Business.

2.10 Contractual Liability

Insuring Clause 1.1 provides cover for any Claim against the Insured in respect of any Contractual Liability in the conduct of the Professional Business.

Note: Exclusion 6.12 limits the cover provided for Contractual Liability in certain circumstances.

2.11 Joint Venture/Consortium

We will indemnify the Insured for:

- 2.11.1** any Claim against the Insured arising out of the acts, errors or omissions of the Insured in the conduct of the Professional Business as part of any joint venture; and
- 2.11.2** the Insured's civil liability, to pay compensation, whether jointly or severally, arising from a Claim against any joint venture entity in respect of whose conduct the Insured is legally liable, PROVIDED ALWAYS THAT:
 - a) such conduct would have been covered by this policy if it had been the conduct of the Insured;
 - b) such conduct occurred whilst the Named Insured was a member of the joint venture or consortium;
 - c) the Named Insured has specifically declared in writing to Us, prior to entering into this policy (whether in response to a specific question in the proposal form or otherwise), its membership of the joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the Insured's proportion); and
 - d) We have specifically agreed in writing to cover the Insured's civil liability in respect of the joint venture.

2.12 Claim Preparation Costs

We will indemnify the Insured for reasonable and necessary costs and expenses incurred with Our prior written consent (not to be unreasonably withheld) for the preparation of any Claim that is covered under this policy, PROVIDED ALWAYS THAT:

- 2.12.1** cover afforded under this extension will not include any Defence Costs; and
- 2.12.2** the maximum aggregate amount payable under this extension is \$25,000.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.13 Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness in connection with any Claim in respect of which the Insured is entitled to indemnity under this policy, We will pay to the Named Insured court attendance costs at the following rates per day for each day on which attendance is required:

- 2.13.1** any principal, partner or director of the Named Insured - \$650.00; and
- 2.13.2** any employee of the Named Insured - \$250.00.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.14 Public Relations Expenses

Where a Claim has been made against the Insured for which cover is available under this policy (or where the Insured has notified facts which may give rise to a future Claim), and in the reasonable belief of the Insured the Insured's reputation has been or will be significantly impaired, then We will reimburse the Insured for any reasonable and necessary costs and expenses of a public relations consultant retained by the Insured with Our prior written consent to design and implement a reasonable and necessary publicity campaign approved by Us with the object of preventing or mitigating damage to the reputation of the Insured in consequence of such Claim or anticipated Claim.

We will not unreasonably withhold or unreasonably delay their consent or approval required by this extension.

The maximum aggregate amount payable under this extension is \$50,000. The Excess payable by the Insured is costs inclusive for any Claim made under this extension.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.15 Mitigation Costs

We will indemnify the Insured for reasonable and necessary mitigation costs and expenses incurred or agreed to be incurred by the Insured;

2.15.1 as a result of a reasonable and necessary action taken by the Insured to reduce the amount of any potential Claim that would be covered under this policy; and

2.15.2 arising from a fact, matter or circumstance first discovered by the Insured during the Policy Period which might lead to a potential Claim that would be covered under this policy,

PROVIDED ALWAYS THAT:

- a) such fact, matter or circumstance is notified to Us immediately upon being discovered by the Insured, during the Policy Period and prior to the Insured incurring any such mitigation costs or expenses;
- b) no admission of liability (whether by word, conduct or otherwise) is made by the Insured;
- c) We have given prior written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such mitigation costs or expenses;
- d) We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension;
- e) cover afforded under this extension will not include any Defence Costs; and
- f) the maximum aggregate amount payable under this extension is \$50,000.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.16 Emergency Defence Costs

We will indemnify the Insured for any Defence Costs which are incurred pursuant to Insuring Clause 1.2, prior to obtaining Our consent, PROVIDED ALWAYS THAT:

- 2.16.1** such Defence Costs are incurred as a result of a sudden, urgent and unexpected occurrence or occasion requiring immediate action and it would not be considered reasonable in such a situation to obtain Our consent to the incurring of Defence Costs;
- 2.16.2** Our written consent is obtained within thirty (30) days of the first of such Defence Costs being incurred;
- 2.16.3** We will only indemnify the Insured for that part of the Insured's liability in respect of such Defence Costs incurred above the Excess regardless of whether the Excess is Defence Costs exclusive; and

2.16.4 if We subsequently refuse to indemnify the Claim to which the Defence Costs relate, the Insured must reimburse Us for any Defence Costs that We have paid.

The maximum aggregate amount payable under this extension is \$100,000.

2.17 Inquiry Costs

We will indemnify the Insured for the reasonable and necessary legal costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) for representation of the Insured at any regulatory inquiry, disciplinary proceeding or other proceedings (other than in respect of a Claim) that the Insured first became aware of and was first initiated during the Policy Period.

The maximum aggregate amount payable under this extension is \$250,000.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.18 Legal Panel

The Insured may contact Us to access Our professional indemnity legal panel during business hours for one complimentary session up to sixty (60) minutes of verbal advice in relation to matters which are covered under this policy.

In the event of a Claim arising from the matter We agree to the appointment of any of Our professional indemnity legal panel firm to act on the Insured's behalf in respect of any Claim notified to Us providing there is no existing or potential conflict of interest, in which case We will refer the Insured to another member of the panel.

The cover provided by this extension is not subject to Insuring Clause 1.1.

2.19 Continuous Coverage

For the purpose of this Clause 2.19 and this clause only, "We" shall extend to mean Berkley Insurance Company (trading as Berkley Insurance Australia) and W. R. Berkley Insurance (Europe) Limited (trading as W. R. Berkley Insurance Australia).

We will indemnify the Insured for any Claim arising from any fact, matter or circumstance known to the Insured, prior to the Policy Period, 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:

2.19.1 We were the professional indemnity insurer of the Insured when the Insured first became aware of such fact, matter or circumstance;

2.19.2 We continued without interruption to be the professional indemnity insurer of the Insured from the time mentioned in paragraph 2.19.1 above up until the Policy Period;

- 2.19.3 had We been notified by the Insured of such fact, matter or circumstance when the Named Insured first became aware of it, the Named 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 the Insured did not notify the fact, matter or circumstance;
- 2.19.4 neither the Claim nor the fact, matter or circumstance has previously been notified to Us or to any other insurer.
- 2.19.5 there is an absence of fraudulent noncompliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances;
- 2.19.6 We may reduce Our liability to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period;
- 2.19.7 if the Insured was entitled to have given notice under any other policy of insurance not issued by Us and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Coverage extension does not apply; and
- 2.19.8 the Indemnity Limit provided for any Claim covered by this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.19.3 above, or under this policy. The terms of this policy otherwise apply.

The cover provided by this extension is not subject to Exclusion 6.1.2.

2.20 Extended Reporting Period

In the event that this policy is not renewed then the cover provided by Insuring Clause 1.1 shall be extended to any Claim first made against the Insured and notified to Us within the Extended Reporting Period, PROVIDED ALWAYS THAT:

- 2.20.1 cover afforded under this extension will not reinstate or increase the Indemnity Limit or extend the Policy Period; and
- 2.20.2 cover afforded under this extension will only apply to an act, error or omission committed by the Insured prior to the end of the Policy Period.

"Extended Reporting Period" means the period commencing immediately following the end of the Policy Period and finishing sixty (60) days thereafter or when the Insured first effects another professional indemnity insurance policy (whichever is the earlier).

The cover provided by this extension does not apply if this policy is cancelled.

2.21 Run-Off Cover

We agree that, in the event that a Named Insured

entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity, then the cover provided under this policy with respect to such Named Insured entity (and any person who is or was a principal, partner, director or employee of such Named Insured prior to the date on which such Named Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity) will continue until the expiry of the Policy Period or cancellation of this policy, whichever is earlier, PROVIDED ALWAYS THAT such cover will only apply in respect of Claims arising out of acts, errors or omissions occurring prior to the date on which such Named Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless agreed in writing by Us.

2.22 Severability

Where the Insured comprises more than one entity, any conduct on the part of an Insured whereby such Insured:

- 2.22.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
- 2.22.2 made a misrepresentation to Us before this contract of insurance was entered into;

will not prejudice the right of any other Insured to indemnity as may be provided by this policy, PROVIDED ALWAYS THAT:

- a) such other Insured is entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Insured;
- b) such other Insured will, 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
- c) enquiry has been made by each Named Insured, before the contract of insurance was entered into of each other Named Insured and persons who make up the Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 (Cth).

Note: This provision does not limit the duty of disclosure owed by the entities or persons that make up the Insured.

2.23 Estates and Legal Representatives

In the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of the Insured, We will indemnify the estate, heirs, legal representatives or assignees of the Insured in respect of any civil liability of the Insured to the extent that the Insured would have been covered by Insuring Clauses 1.1 and 1.2 if the Insured was alive, had capacity or was not insolvent or bankrupt PROVIDED ALWAYS THAT such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply.

3. Optional Extensions

We will provide the following cover, PROVIDED ALWAYS THAT:

- a) each Optional Extension will only apply where it is specifically noted in the Schedule as included; and
- b) the cover provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- c) the inclusion of any Optional Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

3.1 Reinstatement of the Indemnity Limit

If the Indemnity Limit is partially reduced or exhausted by any Claim, Claims and/or Defence Costs then We will reinstate the Indemnity Limit for any subsequent Claims covered by Insuring Clause 1.1 and Defence Costs covered by Insuring Clause 1.2, PROVIDED ALWAYS THAT:

- 3.1.1 such reinstatement shall only apply to subsequent Claims and Defence Costs that are totally unrelated or unconnected to the Claim, Claims and/or Defence Costs that reduced or exhausted the Indemnity Limit; and
- 3.1.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims and Defence Costs (other than Defence Costs which are stated to be "in addition" as per clause 1.2).

3.2 Fidelity

We will indemnify the Named Insured for loss of negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Named Insured or for which the Named Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured person, PROVIDED ALWAYS THAT:

- 3.2.1 such loss is first discovered by the Named Insured during the Policy Period and is notified in writing to Us within twenty-eight (28) days of the date of such discovery (but never beyond the expiry date of the Policy Period);

3.2.2 We will not indemnify the Named Insured 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 the part of the person concerned;

3.2.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

3.2.4 the Named Insured will, 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;

3.2.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Named Insured to the person committing such act, or any monies held by the Named Insured and belonging to such person, will be deducted from any amount payable under this insurance;

3.2.6 We will only indemnify the Named Insured for the balance of loss sustained in excess of the amounts recoverable from the person committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;

3.2.7 one cost inclusive Excess shall apply to each and every loss incurred by the Named Insured;

3.2.8 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission; and

3.2.9 the maximum aggregate amount payable under this extension is \$50,000.

The cover provided by this extension is not subject to Insuring Clauses 1.1 or 1.2 or Exclusion 6.16.

3.3 Extended Continuity Cover

Where:

- 3.3.1 a Named Insured held a professional indemnity insurance policy for a period of twelve (12) months immediately preceding this Policy Period (the Preceding Policy); and

3.3.2 the Preceding Policy was issued by an insurance company which was fully authorised under the Insurance Act 1973;

then, for the purposes of Automatic Extension 2.19 "Continuous Coverage", We will treat the Preceding Policy as if it were a policy issued by Us.

3.4 Multi Year Run-Off

In the event that, during the Policy Period, a Named Insured entity merges with or is taken over by another entity, or is sold or wound up, then We will make available to such Named Insured entity (and any person who is or was a principal, partner, director or employee of such Named Insured prior to the effective date of such merger, takeover, sale or winding up) an extension to the Policy Period for a period of up to an additional six (6) years PROVIDED ALWAYS THAT:

- 3.4.1** such Named Insured shall give Us written notice of such merger, takeover, sale or winding up as soon as reasonably practicable and during the Policy Period;
- 3.4.2** Our offer to extend cover may be subject to such additional terms, conditions and premium as We may reasonably impose;
- 3.4.3** such extension of the Policy Period will not take effect until Our offer is accepted by such Named Insured; and
- 3.4.4** such extension will only apply to Claims arising out of a breach of professional duty in the exercise and conduct of the Professional Business which occurred prior to the effective date of such merger, takeover, sale or winding up.

Note: The Indemnity Limit is not increased by this extension notwithstanding the extended Policy Period.

4. Claim Conditions

The following conditions apply to this insurance:

4.1 Discovery and Notice of a Claim

If during the Policy Period the Insured receives notice of any Claim that may be covered under this insurance the Insured will give notice to Us as soon as practicable and before the expiry of the Policy Period.

Notice of any Claim will be provided in writing to:

National Head of Claims
australiacclaims@berkleyinaus.com.au
Berkley Insurance Australia
PO Box Q296
QVB NSW 1230

4.2 Admission of Liability

In the event of any Claim, the Insured will not admit liability and no admission, offer, settlement, promise or payment will be made by the Insured without Our prior written consent.

4.3 Conduct of Claims

Following notification of any Claim under this policy, We will be entitled to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured will Cooperate with and give all such assistance as We may reasonably require.

4.4 Claim Settlements

We may at any time pay (or agree to pay) to the Insured in connection with any Claim or Claims the Indemnity Limit (less the Excess, any sums already paid and unpaid Defence Costs incurred with Our prior written consent) and upon such payment (or agreement to pay) We will not be under any further liability in respect of such Claim or Defence Costs except for Defence Costs incurred prior to such payment (or agreement to pay) with Our prior written consent.

In no circumstances will We be liable in respect of such Claim or Claims for an amount greater than otherwise provided for in this policy. In the event that:

- 4.4.1** 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 Claim or Defence Costs,

the Insured will 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; and

- 4.4.2** 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 or Defence Costs, Our liability in respect of such agreement will be limited to the amount which We would otherwise have been liable for in accordance with the policy.

4.5 Our and the Insured's Right to Defend

The Insured will not be required to contest any legal proceedings 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 Bar Association of the State or Territory of Australia where this policy is issued) advises that, taking due account of the interests of both Us and the Insured, the defence of such proceedings has reasonable prospects of being successful and should be contested having regard to the alternative to contesting the proceedings.

If the Insured wishes to continue to contest any Claim which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim will thereafter be limited to the amount for which the Claim could have been settled plus Defence Costs incurred with Our prior written consent up to the date upon which it would have reasonably settled the Claim, less any unpaid Excess or the final amount of the Claim including Defence Costs.

4.6 Excess

In respect of each Claim or loss covered by this policy the Insured is liable for the amount of any Excess stated in the Schedule and We will have no liability for the amount of any Excess.

4.7 Allocation

Where the Insured is entitled to indemnity pursuant to Insuring Clause 1.2 Defence Costs in circumstances where a Claim is made and part of that Claim for compensation arises out of, is in connection with or is related to facts or matters

that are not covered by this policy then, Our liability under this policy is limited to that proportion of the Defence Costs which represents a fair and equitable allocation between the Insured and Us, taking into account the relative legal and financial exposures attributable to covered allegations and allegations that are not covered under this policy.

In circumstances where the Insured and Us cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

5. General Conditions

The following conditions apply to this insurance (for the purposes of these conditions any reference to Claim also includes reference to legal costs and expenses and a Fine or Penalty):

5.1 Jurisdiction and Service

In the event of a dispute arising under or in connection with 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.

5.2 Terms of Payment

All premiums due to Us under this policy will be paid within thirty (30) days from the policy's inception.

5.3 Cancellation

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

The Insured may cancel this insurance at any time by giving fourteen (14) days' notice and provided there have been no notifications made by the Insured under this policy the Insured will be entitled to a pro rata refund. If the Insured has made a notification under the policy then the Insured is not entitled to any refund.

In any event We are entitled to retain a minimum premium of \$750.00 in the event of cancellation by the Insured.

5.4 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 will take all reasonable steps to preserve such rights.

5.5 Claims Aggregation

Where two (2) or more Claims are in connection with the same original cause, a series of related or interrelated events or causes or breaches of duty, then all such Claims will constitute one Claim under this policy; and

5.5.1 only one (1) Excess will be payable by the Insured; and

5.5.2 the maximum amount payable by Us in respect thereof will not exceed the Indemnity Limit (except in respect of Defence Costs which are stated to be "in addition" to the Indemnity Limit).

5.6 Alteration to Risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Policy Period including but not limited to:

5.6.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and

5.6.2 any material change in the nature of the advice or professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk, We will be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

5.7 GST

Where We are required to indemnify the Insured and the Insured is entitled to claim an input tax credit in relation to GST the amount of such input tax credit will be deducted from any amount payable by Us.

Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured's entitlement to the Input tax credit.

6. Exclusions

We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

6.1 Previously Known Claim or Circumstance

any:

- 6.1.1 Claim made upon the Insured prior to the inception of this policy;
- 6.1.2 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; or
- 6.1.3 fact, matter or circumstances which were disclosed by the Insured to Us prior to the inception of this policy, whether in the proposal or otherwise; or
- 6.1.4 fact, matter or circumstance which was notified by the Insured to any prior insurer.

6.2 Trading Losses and Insolvency

- 6.2.1 any trading losses or trading liabilities or debts incurred by any business managed or carried on by the Insured; or
- 6.2.2 the insolvency of the Insured.

6.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fine or penalty or any multiple, exemplary, punitive or aggravated damages.

6.4 Nuclear Risks

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

6.5 War and Terrorism

any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

- 6.5.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
- 6.5.2 riots, strikes or civil commotion;
- 6.5.3 any Act of Terrorism; or
- 6.5.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 6.5.1 to 6.5.3 above.

The burden of proving that a Claim does not fall within this exclusion will be upon the Insured.

6.6 Asbestos, Toxic Mould and Pollution

asbestos, toxic mould, seepage, Pollution or contamination of any kind.

6.7 USA/Canada

- 6.7.1 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 any jurisdiction in connection with such an action; or
- 6.7.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

6.8 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 have been 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.

6.9 Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, 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 any dispute in connection with employment.

6.10 Liability Involving Transport or Property Owned by the Insured

the ownership, possession or use by or on behalf of the Insured of any:

6.10.1 aircraft, watercraft, hovercraft, motor vehicle or trailer; or

6.10.2 buildings, structures, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.

6.11 Bodily Injury and/or Property Damage unless in Breach of a Professional Duty

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any person(s) or loss of or damage to property unless such Claim arises directly out of any breach of a professional duty owed by the Insured in the conduct of the Professional Business.

6.12 Contractual Liability

any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement:

6.12.1 to pay liquidated damages or any penalty; or

6.12.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

6.13 Supply of Goods

the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the Insured.

6.14 Directors' and Officers' Liability

any conduct or alleged conduct of the Insured in the capacity of a director, secretary or officer of a body corporate or any breach or alleged breach by the Insured of a duty owed in that capacity.

6.15 Trustee Liability

any services provided by the Insured in the capacity of a trustee provided always that this exclusion will not apply where the Insured acts as a stakeholder, custodian or trustee where such activities are undertaken incidentally to the provision of other professional services in the conduct of the Professional Business.

6.16 Fraud, Dishonest, Criminal or Intentional Loss Damage or Injury

any act, error or omission of any person which is dishonest, fraudulent, criminal or malicious or which is intended by that person to cause loss, damage or injury or to deprive a third party of a right to which they would otherwise be entitled (or which is done or omitted to be done with reckless disregard for the consequences) or is a wilful or reckless breach of statute, contract or duty.

6.17 Certain Legislation

the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth) or any State or Territory Fair Trading Act.

6.18 Infringement of Intellectual property Rights

any inadvertent infringement or alleged infringement of any copyright or patents or other intellectual property rights.

6.19 Payments or Benefits Received

any fees, charges, disbursements, expenses, costs, taxes, commissions or other payments or benefits of whatsoever kind received or retained by, or paid or payable to, the Insured in connection with the Professional Business.

6.20 Associated Companies

made against the Insured by any firm, company, partnership or other entity 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 solely emanating from an independent and unrelated third party.

6.21 Retroactive Date

the conduct of the Professional Business prior to the retroactive date (if any) specified in the Schedule.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions will remain in full force and effect.

7. 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:

7.1 Act of Terrorism

Means activity that:

- 7.1.1 involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and
- 7.1.2 appears to be intended to:
 - 7.1.2.1 intimidate or coerce a civilian population;
 - 7.1.2.2 disrupt any segment of the economy of a government de jure or de facto, state or country;
 - 7.1.2.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
 - 7.1.2.4 affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

7.2 Claim

Means:

- 7.2.1 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 relief;
- 7.2.2 the positive assertion in writing of a legal entitlement to damages or other compensatory relief in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue such legal entitlement; or
- 7.2.3 for the purpose of Automatic Extension 2.8, any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty.

7.3 Contractual Liability

Means 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.

7.4 Cooperate

Means that the Insured:

- 7.4.1 assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available;
- 7.4.2 will have adequate internal systems in place, which will allow ready access to material information; and
- 7.4.3 will 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.

7.5 Defence Costs

Means all reasonable and necessary costs and expenses incurred in the investigation, reporting on, defence or settlement of any Claim in respect of which We are liable to indemnify the Insured under this policy. This also includes reporting in writing to Us on the investigation, defence or settlement of any Claim.

7.6 Documents

Means 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 will include computer software and systems records (electronic data will 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 instruments.

7.7 Excess

If the Schedule states that the Excess is Defence Costs "inclusive" then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured.

If the Schedule states that the Excess is Defence Costs “exclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured excluding Defence Costs.

The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST.

7.8 Fine or Penalty

Means:

- 7.8.1** a penalty imposed upon the Insured by any regulatory authority arising from any actual or alleged breach of any occupational health and safety or environmental legislation; or
- 7.8.2** any compensatory civil penalty.

7.9 Indemnity Limit

Means the sum shown in the Schedule which is available to indemnify the Insured in respect of any one Claim and in the aggregate during the Policy Period subject to Optional Extension 3.1.

7.10 Insured

Means:

- 7.10.1** the Named Insured;
- 7.10.2** any person who is, during the Policy Period, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;
- 7.10.3** any person who is, during the Policy Period, an employee of the Named Insured but only in respect of work performed while an employee of the Named Insured and on behalf of the Named Insured; and/or
- 7.10.4** any former principal, partner, director or employee of the Named Insured but only in respect of work performed while a principal, partner, director or employee of the Named Insured and on behalf of the Named Insured.

7.11 Named Insured

Means the person(s), partnership, company, corporation or other entity named as the Insured in the Schedule.

7.12 Policy Period

Means the period shown in the Schedule.

7.13 Pollution

Means any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which will 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, will include offence caused to any of their senses) into or onto any water, land or air.

7.14 Preceding Policy

Means a professional indemnity insurance policy for a period of twelve (12) months immediately preceding, without interruption, the Policy Period.

7.15 Professional Business

Means the professional services provided by or on behalf of the Insured as described in the Schedule.

7.16 Schedule

Means the document entitled ‘Schedule’ that relates to this insurance.

7.17 We, Us, Our

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

Public & Products Liability Insurance **Australian Wording**

Wording Document

Contact

australia@berkleyinaus.com.au
www.berkleyinaus.com.au

Brisbane

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

Adelaide

24 Divett Place
Adelaide SA 5000
Ph: 08 8232 2767

Sydney

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

Melbourne

Suite 5, Level 8 454 Collins Street
Melbourne VIC 3000
Ph: 03 8319 4080

Perth

Suite 5, 531 Hay Street
Subiaco WA 6008
Ph: 08 9380 8327

Public & Products Liability Insurance

Australian Wording

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 business, 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. 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.

C. Privacy

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

Disclosure of Information that you provide to us

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.

- You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

Cross Border

We will share Your personal information with the Berkley group of companies. Our data containing Your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

Renewal

Prior to Your Policy expiry We will inform You whether We intend to offer renewal of Your Policy and if so, on what terms and conditions. If We decide to offer renewal, You will receive a notice setting out the renewal terms, conditions and premium payable to renew the Policy. It is important to check the renewal terms before renewing Your Policy in order to check the Sums Insured reflecting Your Vehicle market values (less GST) are correct, the Excess(s), terms and conditions providing cover are sufficient and appropriate for Your insurance needs. During renewal, You still have to discharge Your Duty of Disclosure to Us.

Further information

If you would like further information, please review our full Privacy Policy on our website www.berkleyinaus.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to australiacclaims@berkleyinaus.com.au.

Contact Details

Berkley Insurance Australia
Level 23, 31 Market Street
SYDNEY NSW 2000
Ph: 02 9275 8500
Fax: 02 9261 2773
Email: australia@berkleyinaus.com.au
Web site: www.berkleyinaus.com.au

Contact Details

Sydney

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

Melbourne

Suite 5, Level 8
454 Collins Street
Melbourne VIC 3000
Ph: 03 8319 4080

Brisbane

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

Perth

Suite 5, 531 Hay Street
Subiaco WA 6008
Ph: 08 9380 8327

Adelaide

24 Divett Place
Adelaide SA 5000
Ph: 08 8232 2767

Email: australia@berkleyinaus.com.au

Web site: www.berkleyinaus.com.au

Public & Products Liability Insurance

Australian Wording

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Public & Products Liability Insurance

Australian Wording

1. Policy Information

For information purposes only and does not form part of the policy.

This Policy contains important information about the type of cover available and your rights and obligations in relation to your insurance. Please read it carefully to ensure that it meets your requirements.

1.1 This Policy consists of:

- 1.1.1 the Insuring Clause which explains the basis on which the cover is provided;
- 1.1.2 the Schedule which shows who is the Insured, the Business being covered and other Policy particulars such as the Period of Insurance, the Limits of Indemnity and certain amounts for which the Insured may be responsible;
- 1.1.3 the General Policy Definitions;
- 1.1.4 Sections 1 and 2 of the Policy which give precise details of the cover being provided;
- 1.1.5 the General Policy Extensions which extend the cover provided within the individual Sections;

1.1.6 the General Policy Exclusions and General Policy Conditions which incorporate terms that apply to the whole Policy;

1.1.7 any Endorsement(s) which might apply to the Policy or individual Sections and which incorporate cover amendments, extensions, limitations and such like.

Immediate notice should be given to the Insurer of any changes which may affect the insurance provided by this Policy.

Alterations in the cover required after issue of the Policy will be confirmed by separate Endorsement(s) which you should file with the Policy. You should refer to these Endorsement(s) and the Policy to ascertain precise details of cover currently in force.

Your insurance broker will be able to provide any help or information that you might require.

2. Insuring Clause

2.1 Insuring Clause

The Insurer will (subject to the terms, conditions, exclusions and limits) indemnify the Insured for all amounts which the Insured shall become legally liable to pay as Compensation in respect of the events set out in Sections 1 and 2 of this Policy and occurring in connection with the Business during the Period of Insurance.

3. General Policy Definitions

Applicable to the whole Policy wherever these words appear starting with a capital letter.

3.1 Act of Terrorism means the actual or threatened:

- 3.1.1** use of force or violence against persons or Property;
- 3.1.2** commission of an act dangerous to human life or Property; or
- 3.1.3** 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;
- 3.1.4** the reasonably apparent intent or effect is to intimidate or coerce a government or organisation or to disrupt any segment of the economy;
- 3.1.5** 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
- 3.1.6** 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.

3.2 Aircraft shall mean any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space.

3.3 Business shall mean the Insured's business as described in the Schedule and shall include:

- 3.3.1** the provision and management of catering, social, sports, educational, medical, dental and welfare organisations for the benefit of the Insured's Employees and fire, security, first aid and ambulance services;
- 3.3.2** the ownership, repair, maintenance and decoration of the Insured's premises;
- 3.3.3** 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.

3.4 Compensation shall mean:

- 3.4.1** all sums which the Insured shall be legally liable to pay as compensation;
- 3.4.2** Claimant's costs and expenses resulting from Occurrences within the Territorial Limits; but not fines or penalties punitive, liquidated, exemplary or aggravated damages or any additional damages resulting from the multiplication of compensatory damages.

3.5 Conditions shall mean the General Policy Conditions.

3.6 Contractual Liability shall mean liability which attaches by virtue of a contract or agreement.

3.7 Employee shall mean:

- 3.7.1** any person engaged in the Business under a contract of service or apprenticeship with the Named Insured;
- 3.7.2** any person under a contract of service or apprenticeship with another employer who is hired to or borrowed by the Named Insured;
- 3.7.3** any person engaged by the Named Insured under a work experience government training or similar scheme.

3.8 Endorsement shall mean any endorsement(s) which might apply to this Policy ("Policy Endorsement") or individual Section ("Section Endorsement").

3.9 Excess shall mean the total amount shown in the Schedule payable by the Insured or any other person entitled to indemnity. The Excess applies to each Occurrence or Claim as specified in the Schedule and is payable at such time required by the Insurer.

If any payment made by the Insurer shall include the amount for which the Insured or any other person entitled to indemnity is responsible such amount shall be repaid to the Insurer forthwith.

3.10 Exclusions shall mean the General Policy Exclusions and the Section Exclusions.

3.11 Insured shall mean:

- 3.11.1** the Named Insured;
- 3.11.2** any partner, officer, director, or Employee of

- the Named Insured while acting within the scope of their duties for the Named Insured;
- 3.11.3** any Principal of the Named Insured but only in respect of the liability of such principal arising out of the performance by the Named Insured of any contract or agreement for the performance of work or services in connection with the Business.
- 3.12 Insurer** shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.
- 3.13 Limit of Indemnity** shall mean the limit as specified in the Schedule and is the maximum amount payable by the Insurer. The Limit of Indemnity in respect of Occurrences in the United States of America, Canada and their respective protectorates and territories shall be inclusive of Defence Costs, claimant's costs and Expenses and will apply in the aggregate to all claims in any one Period of Insurance.
- 3.14 Mechanically Propelled Vehicle** shall mean any type of machine on wheels, skis or on self-laid tracks made or intended to be propelled other than by manual or animal power.
- 3.15 Named Insured** shall mean the person(s) or corporate body(ies) named as such in the Schedule.
- 3.16 Occurrence** shall mean:
- 3.16.1** an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury or Property Damage that is neither expected nor intended from the Insured's standpoint;
- 3.16.2** all events of a series consequent on or attributable to one source or original cause are deemed to be one Occurrence.
- 3.17 Period of Insurance** shall mean the period specified in the Schedule or any Endorsement.
- 3.18 Personal Injury** shall mean:
- 3.18.1** bodily injury, death illness, disease, or disability;
- 3.18.2** mental injury mental anguish or shock;
- 3.18.3** false arrest, false imprisonment, wrongful detention, malicious prosecution, or humiliation;
- 3.18.4** assault and battery not committed by or at the direction of the Insured, unless committed for the purpose of preventing or eliminating danger to persons or property;
- 3.18.5** racial, religious, sexual or age discrimination not committed by or at the direction of
- the Insured;
- 3.18.6** loss of consortium resulting from any of the circumstances described in clauses (1.18.1) to (1.18.4) above.
- 3.19 Policy** shall mean and include:
- 3.19.1** all terms (including without limitation the Cover, Definitions, Extensions, Conditions, Exclusions and Limit of Indemnity) set out in this document;
- 3.19.2** the Schedule;
- 3.19.3** all Endorsements; incorporated in and issued from time to time for incorporation in this document;
- 3.19.4** all of which shall be read together and constitute the contract of insurance.
- 3.20 Pollution or Contamination** shall mean:
- 3.20.1** 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
- 3.20.2** all Property Damage or Personal Injury directly or indirectly caused by or arising from such pollution or contamination as described in 1.20.1 above happening outside of the United States of America, Canada and their respective protectorates and territories.
- 3.21 Premium** shall mean the amount payable by the Insured specified as such in the Schedule or any Endorsement.
- 3.22 Principal** shall mean any person, employer, firm, company, ministry or authority for whom the Insured is carrying out a contract or agreement for the performance of work.
- 3.23 Product** shall mean any product or item (after it has ceased to be in the possession of the Insured) sold supplied erected repaired altered treated installed processed manufactured tested serviced hired out stored transported or delivered by or through the Insured including containers packaging or labelling thereof in the course of the Business in or from the Territorial Limits and also includes:
- 3.23.1** any design, formula or specification of such Product;
- 3.23.2** anything in respect of which the Insured is deemed to be the manufacturer by operation of a law of Australia or its external territories.
- 3.24 Property Damage** shall mean:
- 3.24.1** physical injury to, destruction of or loss of tangible property including resulting loss of use of that property;

3.24.2 loss of use of tangible property that is not physically damaged, lost or destroyed provided that such loss of use is caused by physical damage to or destruction of other tangible property.

3.25 **Schedule** shall mean the Schedule for the time being in force.

3.26 **Section** shall mean each individual section of this Policy.

3.27 **Territorial Limits** shall mean anywhere in the World except the United States of America, Canada and their respective protectorates and territories where this insurance will only apply in respect of the Insured's Product exported into such countries as agreed in writing by the Insurer and/or executives normally resident in the Commonwealth of Australia travelling to such countries.

3.28 **Tool of Trade** shall mean any Mechanically Propelled Vehicle which has mechanical digging, scraping, drilling equipment or any tool or plant attached but only when it is being used by the Insured on any worksite at which work is performed for or in connection with the Business.

3.29 **Watercraft** shall mean any vessel, craft, or thing made or intended to float on or in or travel on or through or under water.

References in this Policy to any statute, statutory provision, directive or other legislation include a reference to that statute statutory provision directive or legislation as amended extended consolidated or replaced from time to time (whether before or after the date of this Policy) and include any order regulation instrument or other subordinate legislation made under the relevant statute statutory provision directive or legislation.

4. Section 1 – Public Liability

4.1 The Cover

Subject to the Terms and Conditions of this policy and the limit of Indemnity under Section 1 of the Schedule, the Insurer will indemnify the Insured in respect of all sums which they shall become legally liable to pay for Compensation arising from;

- 4.1.1 Personal Injury to any person;
- 4.1.2 Property Damage other than to Property belonging to the Insured first happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence and in connection with the Business.

4.2 Limit of Indemnity

The liability of the Insurer under this Section for Compensation in respect of any one Occurrence or series of Occurrences arising out of or attributable to any one cause or event shall not exceed the Limit of Indemnity in the Schedule.

4.3 Extensions

These Section Extensions are subject otherwise to the terms (including without limitation the Conditions and the Exclusions) of this Policy:

4.3.1 Movement of Obstructing Vehicles

Section Exclusion 5 shall not apply to liability caused by or arising from any vehicle (not owned by or hired by or lent to the Insured) being driven by the Insured or by any Employee with the Insured's permission whilst such vehicle is being moved for the purpose of allowing free movement of any vehicles or pedestrians.

PROVIDED THAT:

- a) movements are limited to vehicles parked on or obstructing the Insured's premises or any site at which the Insured is working;
- b) the vehicle causing obstruction will not be driven by any person unless such person is licensed and competent to drive the vehicle;
- c) the vehicle causing obstruction is driven by use of the owner's ignition key;
- d) the Insurer shall not provide indemnity against liability;
 - (i) in respect of damage to such vehicle.

- (ii) in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle.

4.3.2 Overseas Personal Liability

The Insurer will indemnify:

- a) where the Named Insured is a natural person, the Named Insured; or
- b) at the request of the Named Insured;
 - (i) any director, officer, partner or Employee of the Named Insured normally resident in Australia.
 - (ii) any spouse or child of the persons stated in (a) or (b)(i) above who are normally resident in Australia and accompanying such persons in respect of liability incurred by such persons in a personal capacity in connection with an event occurring in a country outside of the Territorial Limits whilst on a temporary visit to such country in connection with the Business. In addition, the Insurer will indemnify the Named Insured for any liability arising out of any event for which the persons referred to at (b)(i) or (b)(ii) are or would, at the request of the Named Insured, be entitled to be indemnified under this extension.

PROVIDED THAT:

- 4.3.3 any person entitled to indemnity under this Section Extension shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply;
- 4.3.4 nothing in this Section Extension shall increase the liability of the Insurer to pay any amount exceeding the Limit of Indemnity regardless of the number of persons claiming to be indemnified;
- 4.3.5 the Insurer shall not provide indemnity against;
 - a) any Contractual Liability but only to the extent to which it would not have attached in the absence of such contract or agreement;

- b) liability for which indemnity is provided by any other insurance;
- c) liability in respect of Property Damage to property belonging to or in the custody or under the control of any person entitled to indemnity under this Section Extension;
- d) liability in respect of Personal Injury to any person entitled to indemnity under this section extension;
- e) liability caused by or arising from:
 - (i) the ownership or occupation of land or buildings;
 - (ii) the carrying on of any business, profession, trade or employment;
 - (iii) the ownership possession or use of animals other than horses or domestic dogs or cats.

4.4 Exclusions

The Insurer shall not provide indemnity against liability:

- 4.4.1** in respect of Personal Injury to any Employee or person arising out of and in the course of employment by the Insured, where the Insured is indemnified or would be entitled to be indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any workers' compensation law;
- 4.4.2** in respect of Personal Injury to any Employee for mental anguish, harassment, libel, slander, defamation, humiliation or discrimination whilst in the Insured's service or while employed by the Insured;
- 4.4.3** imposed by the provisions of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination;
- 4.4.4** caused by or arising from the ownership possession maintenance operation or use by or on behalf of the Insured of any:
 - a) airlines, Aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks;
 - b) hovercraft or Watercraft other than hand propelled Watercraft or other Watercraft not exceeding 8 metres in length.
- 4.4.5** caused by or arising from the ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:
 - a) for which compulsory insurance or security is required under any legislation governing the use of the vehicle;

- b) where indemnity is provided by any other insurance effected by or on behalf of the Named Insured or the Insured.

Provided that this Exclusion shall not apply to liability caused by or arising from:

- c) the use of vehicles whilst being operated as a Tool of Trade at the Insured's premises or on any site at which the Insured is working;
- d) the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle;
- e) Damage to any building, bridge, weighbridge, road or to anything beneath caused by vibration or by the weight of any vehicle or of its load.

4.4.6 caused by or arising from any Product supplied after it has ceased to be in the custody or under the control of the Insured or any Employee other than food or drink for consumption on the Insured's premises.

4.4.7 in respect of Property Damage to property:

- a) belonging to the Insured;
 - b) in the physical or legal care, custody or control of the Insured or any Employee of the Insured, other than;
 - (i) personal effects of any visitor, director, partner or Employee of the Insured.
 - (ii) premises (including their fixtures and fittings) leased or rented to the Insured.
- or**
- (iii) premises and their contents not belonging to, leased or rented to the Insured, at which the Insured is conducting work as part of their usual Business.
 - (iv) 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.
 - (v) vehicles and their contents in any Car Park owned by the Insured not operated for reward.
 - (vi) all other property up to a limit of \$250,000 in the aggregate in any one Period of Insurance.

4.4.8 which is indemnifiable under Section 2 of this Policy.

5. Section 2 – Products Liability

5.1 The Cover

Subject to the Terms and Conditions of this policy and the Limit of Indemnity under Section 2 in the Schedule, the Insurer will indemnify the Insured in respect of all sums which they will become legally liable to pay for Compensation arising from:

- 5.1.1 Personal Injury to any person;
- 5.1.2 Property Damage other than to Property belonging to the Insured happening during the Period of Insurance anywhere within the Territorial Limits as a result of an Occurrence and caused by any Product.

5.2 Limit of Liability

The liability of the Insurer for Compensation under this Section 2 shall not exceed the amount stated as the Limit of Indemnity in the Schedule in any one Period of Insurance.

5.3 Exclusion

The Insurer shall not provide indemnity against liability:

- 5.3.1 in respect of damages, costs or expenses arising out of the withdrawal recall inspection repair replacement alteration removal rectification reinstatement or reinstallation of any of the Insured's Product's or any refund made in respect of any of the Insured's Product's;
- 5.3.2 against liability caused by or arising from any Product which to the knowledge of the Insured is intended for:
 - a) use in or on any aircraft or aero spatial device;
 - b) aviation or aero spatial purposes.
- 5.3.3 caused by or arising from any Product supplied which to the knowledge of the Insured is for use in or supply to the United States of America or Canada and their respective protectorates and territories unless otherwise agreed in writing by the Insurer;
- 5.3.4 property damage to your products if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability;
- 5.3.5 which is indemnifiable under Section 1 of this Policy.

6. General Policy Extensions

Applicable to the whole Policy except where indicated.

These General Policy Extensions are subject otherwise to the terms (including without limitation the Conditions and the Exclusions) of this Policy.

6.1 Defence Costs and Expenses in respect of any claim for which indemnity is available under Sections 1 and 2 of this Policy, the Insurer will pay, in addition to such indemnity, all costs and expenses (other than loss of earnings) in respect of investigation, settlement or defence of such claim incurred with the written consent of the Insurer. Provided that:

- 6.1.1** the Insurer will not be obligated to pay any such costs and expenses after the Limit of Indemnity has been exhausted by payment of judgements or settlements;
- 6.1.2** in the event of an Occurrence happening in the United States of America, Canada or their respective protectorates and territories for which Compensation is otherwise payable by the Insurer under this policy, the Limit of Indemnity shall apply to such claims inclusive of such Defence Costs and Expenses.

6.2 Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness at the request of the Insurer in connection with a claim in respect of which the Insured is entitled to indemnity under this Policy the Insurer will reimburse the Insured at the following rates per day for each day on which attendance is required:

- 6.2.1** any director or partner of the Insured AUD 650;
- 6.2.2** any Employee AUD 250.

6.3 Indemnity to Other Persons

The Insurer will also indemnify as if a separate Policy had been issued to each:

- 6.3.1** the legal personal representatives of the Insured or any other person entitled to indemnity under this Policy but only in

respect of liability incurred by the Insured or such other person;

- 6.3.2** any owner of plant hired to the Insured but only to the extent required by the conditions of any written contract or agreement of hire 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 or dental practitioner in respect of medical or dental services provided.

PROVIDED ALWAYS THAT:

Any persons specified above shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply:

- 6.3.3** any persons specified above shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply;
- 6.3.4** nothing in this General Policy Extension shall increase the liability of the Insurer to pay any amount exceeding the Limit of Indemnity of the operative Section(s) regardless of the number of persons claiming to be indemnified.

6.4 Cross Liabilities

If the Insured comprises more than one party the Insurer will under Sections 1 and 2 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 that nothing in this General Policy Extension shall increase the liability of the Insurer to pay any amount exceeding the Limit of Indemnity of the operative Section(s) regardless of the number of persons claiming to be indemnified.

7. General Policy Exclusions

Applicable to Section 1 and 2 of this policy.

7.1 Radioactive Contamination

The Insurer shall not provide indemnity in respect of any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- 7.1.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 7.1.2 the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 7.1.3 exposure to magnetic, electric or electromagnetic fields or radiation.

7.2 War and Terrorism

The Insurer shall not provide indemnity in respect of any liability of whatsoever nature directly or indirectly caused or occasioned by or happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, Act of Terrorism or military or usurped power or confiscation or nationalisation or requisition or destruction of or Property Damage by or under the order of any government or public authority or any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

7.3 Contractual Liability

The Insurer shall not provide indemnity in respect of liability assumed under an agreement unless such liability:

- 7.3.1 would have attached in the absence of such agreement;
- 7.3.2 arises out of a condition or warranty of goods implied or imposed by statute;
- 7.3.3 has been agreed by the Insurer and specifically designated in the Schedule or in any written Endorsement.

7.4 Pollution or Contamination

The Insurer shall not provide indemnity in respect of:

- 7.4.1 liability arising from Pollution or Contamination unless caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance;
- 7.4.2 the cost of removing nullifying or cleaning up seeping polluting or contaminating substances unless the Pollution or Contamination is caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance.

7.5 Professional Liability

The Insurer shall not provide indemnity in respect of liability caused by or arising out of the rendering of or failure to render professional advice, design, specification or service for a fee.

7.6 Asbestos

The Insurer shall not provide indemnity in respect of liability directly or indirectly arising out of resulting from in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

7.7 Cyber Liability

The Insurer shall not provide indemnity in respect of liability directly or indirectly arising out of:

- 7.7.1 alteration of, or damage to; or
- 7.7.2 a reduction in functionality availability or operation of a computer system or programme hardware data information repository microchip integrated circuit or similar device in computer equipment or non-computer equipment as a result of the Insured's "e-activities".

For the purpose of this exclusion, "e-activities" means any use of or Business undertaken by the Insured or by any person, persons, partnership, firm or company acting for or on behalf of the Insured in connection with electronic networks including the internet and private networks intranets extra-nets electronic mail worldwide web and similar medium.

7.8 Fines, Penalties, Punitive and Liquidated Damages

The Insurer shall not provide indemnity in respect of any liability to pay fines, penalties, punitive, liquidated exemplary or aggravated damages or any additional damages resulting from the multiplication of compensatory damages.

7.9 Loss of Use

The Insurer shall not provide indemnity under this policy for any claim in respect of loss of use of tangible property which has not been physically injured or destroyed resulting from:

- 7.9.1** a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- 7.9.2** the failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This General Policy Exclusion 5.9.2 shall not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of Products or work performed by or on behalf of the Insured after such Products or work have been put to their intended use by any entity other than the Insured.

7.10 Rectification of faulty work

The Insurer shall not provide indemnity under this policy for any liability arising from any claim in respect of the rectification of faulty work performed by or on behalf of the Insured.

7.11 Libel, slander or defamatory material

The Insurer shall not provide indemnity under this policy in respect of liability directly or indirectly arising out of the publication or utterance of libel or slander or other defamatory material.

7.12 Other Insurance

The Insurer shall not provide indemnity under this policy in respect of any liability to the extent that indemnity is available to the Insured (or other person entitled to make a claim on the Policy) for such liability under some other contract of insurance PROVIDED THAT:

- 7.12.1** this exclusion shall not operate in respect of a claim by the Named Insured where the Named Insured has entered into the other contract of insurance.

8. General Policy Conditions

Applicable to the whole Policy where indicated.

8.1 Material Change

The Insured shall notify the Insurer of any material change to the Business within 30 days of such change taking place. The Insurer shall reserve the right to amend the terms and Conditions of this policy upon receipt of this information and may also cancel the Policy in certain circumstances.

8.2 Premium Adjustment

If the Premium is based on estimates an accurate record containing all particulars relative thereto shall be kept by the Insured. The Insured shall at all times allow the Insurer to inspect such record and shall supply such particulars as the Insurer may require within one month from the expiry of the Period of Insurance and the Premium shall thereupon be adjusted by the Insurer from time to time. At the request of the Insurer the Insured shall supply an auditor's certificate in support of such particulars.

If the Insured fails to supply such particulars within the period stated the Insurer shall be entitled to make a reasonable estimate of such particulars and adjust the Premium accordingly.

8.3 Reasonable Care

The Insured shall take all reasonable care:

- 8.3.1 to prevent any event which may give rise to a claim under this Policy;
- 8.3.2 to maintain the premises plant and everything used in the Business in proper repair;
- 8.3.3 in the selection and supervision of Employees;
- 8.3.4 to comply with all statutory and other obligations and regulations imposed by any authority;
- 8.3.5 to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

8.4 Claims (Notice in Writing from the Insured)

The Insured or their legal personal representatives shall give notice in writing to the Insurer as soon

as possible after any Occurrence or event which may give rise to liability under this Policy with full particulars of such Occurrence or event. Every claim notice letter or writ or process or other document served on the Insured shall be forwarded to the Insurer immediately on receipt.

Notice in writing shall also be given immediately to the Insurer by the Insured of any impending prosecution inquest or fatal inquiry in connection with any such event.

Notice of any claim will be provided in writing to:
National Head of Claims
australiacclaims@berkleyinaus.com.au
Berkley Insurance Australia
PO Box Q296
QVB NSW 1230

8.5 Claims (Conduct and Control)

No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Insurer.

The Insurer shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or the settlement of any claim and to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise against all other parties or persons. The Insurer shall have full discretion in the conduct of any proceedings and in the settlement of any claim against the Insured and the Insured shall give all such information and assistance as the Insurer may require.

8.6 Claims (Discharge of Liability)

The Insurer may at any time at its sole discretion under Sections 1 and 2 pay to the Insured the Limit of Indemnity (less any sum or sums already paid in respect or in lieu of Compensation) or any lesser sum for which the claim or claims against the Insured can be settled and upon such payment the Insurer shall not be under any further liability in respect of such claim or claims except for other costs and expenses for which the Insurer may be responsible incurred prior to such payment.

PROVIDED ALWAYS THAT:

In the event of a claim or series of claims resulting in the liability of the Insured to pay a sum in excess of the Limit of Indemnity the Insurer's liability under Sections 1 and 2 for costs and expenses shall not

exceed an amount being in the same proportion as the Insurer's payment to the Insured bears to the total payment made by or on behalf of the Insured in settlement of the claim or claims. Any dispute concerning the interpretation of the terms of this Policy shall be resolved in accordance with the law and submit to the jurisdiction of the territory in which this Policy is issued.

8.7 Premium

The Insured must pay to the Insurer, all Premiums due to the Insurer together with all taxes (General Insurance Tax) due on the Premiums.

8.8 Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to all the Insured's rights of recourse against any other entity (ies), person or organisation. The Insurer shall be entitled to pursue and enforce such rights in the name of the Insured who shall provide us with all reasonable assistance in order to secure those rights. The Insured is not to waive or release any right of recourse against any other entity without first obtaining permission in writing from the Insurer.

8.9 Cancellation

This policy may be cancelled at any time at the written request of the Insured in which case the Insurer shall provide a pro rata refund of premium for the unexpired period of insurance provided no claim or incident has been notified in the current period of insurance.

The Insurer may cancel this Policy in accordance with Sections 59 and 60 of the Insurance Contracts Act 1984 (Cth) and as amended, by giving notice by recorded delivery letter to the last known address of the Insured and in such case the Insured shall be entitled to the return of a proportionate part of the Premium in respect of the unexpired Period of Insurance or if the Premium has been based wholly or partly upon estimates the Premium shall be adjusted in accordance with General Policy

Condition 2 except that if a claim or incident has been notified in the current Period of Insurance no refund of Premium shall be made.

8.10 Notification of Other Insurances

If at the time of any Personal Injury or Property Damage which is indemnifiable, or but for exclusion 5.12 would be indemnifiable, under this policy there exists any other insurance policy which would provide indemnity to the Insured, then the Insured must provide full details of any such insurance policy to the Insurer when making any claim under this policy.

8.11 Jurisdiction and service

In the event of a dispute arising under or in connection with 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.