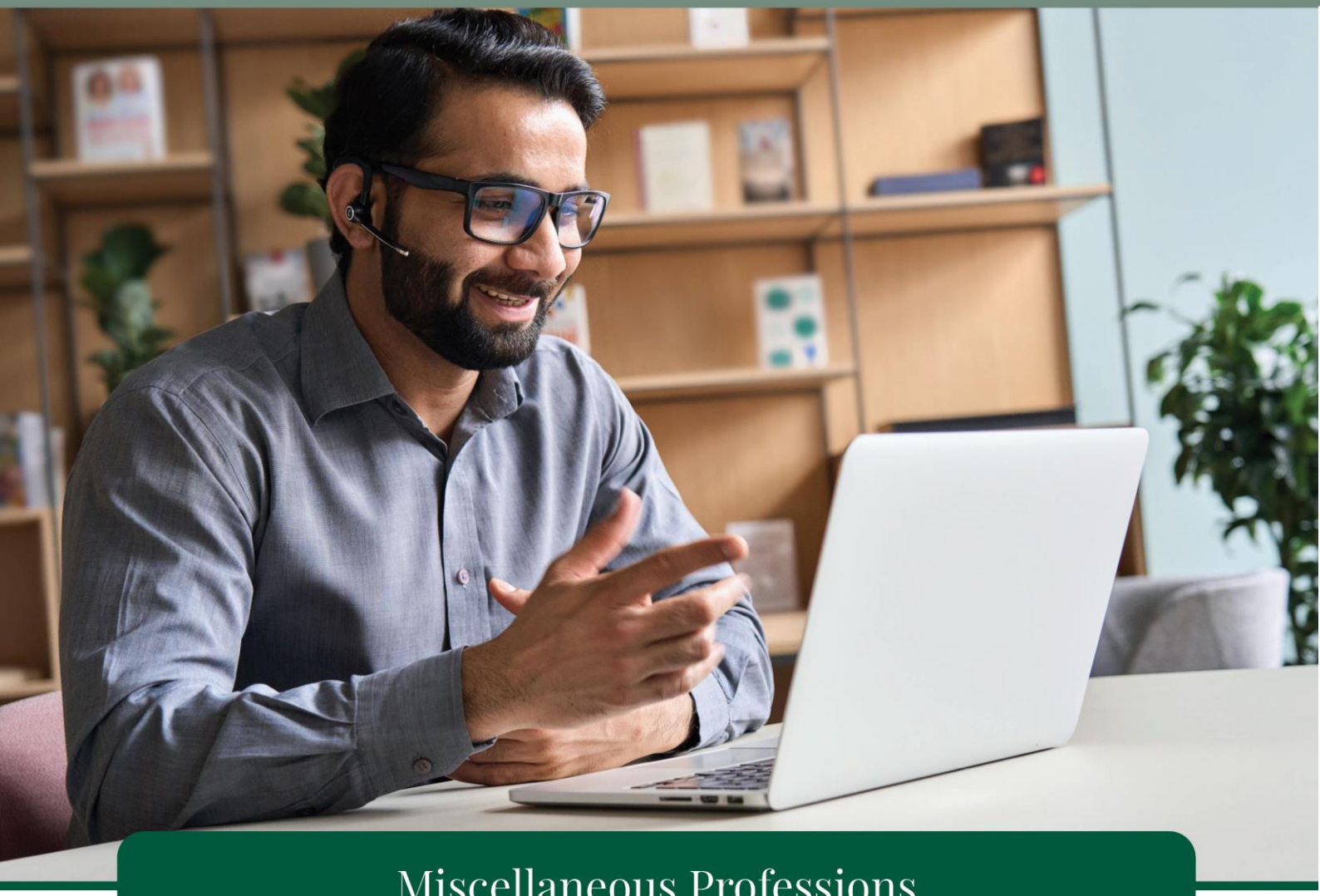

Miscellaneous Professions

Professional Indemnity Insurance

Wording Document

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| a Berkley Company

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Miscellaneous Professions

Professional Indemnity Insurance

Important Information

Please read the following information

A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

B. Claims Made and Notified Policy

This policy is issued on a 'claims made and notified' basis. This means that the policy responds to:

(a) claims first made against the insured during the Policy Period and notified to Us during the Policy Period, provided that the Insured was not aware at any time before policy inception of facts, matters or circumstances which would have put a reasonable person in the Insured's position on notice that a claim may be made against the Insured; and

(b) written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984. If the Insured chooses to tell Us in writing about facts which might give rise to a claim against the Insured as soon as reasonably practicable after the Insured becomes aware of these facts but before insurance cover provided by the policy expires, then We are not relieved of liability under the policy for the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the policy.

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After the policy expires, no new notification of facts may be made on the expired policy even though the event giving rise to the claim against the Insured may have occurred during the Policy Period. An exception to this is where an extended reporting period applies to the policy. If an extended reporting period applies, then cover may be available for notifications of facts or claims made up to expiry of the extended reporting period.

When completing the proposal the Insured is required to provide full details of all facts, matters and circumstances of which they are aware and which a reasonable person in the Insured's position would consider may give rise to a claim. It is important that the Insured make proper disclosure. Refer to the Duty of Disclosure above to understand the Insured's disclosure obligations.

C. Retroactive Date

This policy does not provide cover for claims arising from or in connection with an act, error, omission or event occurring or alleged to have occurred before the policy's retroactive date, where such a date is specified in the Schedule.

D. 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, We will not cover you under the insurance for such loss or damage.

E. 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 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.

F. Privacy Statement

We are a member of the W. R. Berkley Corporation, which We refer to as WRBC.

We take privacy seriously and are committed to handling and protecting your personal information in accordance with the Privacy Act 1988 (Cth) and Australian Privacy Principles (APPs). This Privacy Statement explains how We collect, hold, use and disclose your personal information and who We share it with. It should be read with Our Privacy Policy which provides more information about Our privacy practices.

Our Privacy Policy is available at www.berkleyinaus.com.au. Alternatively, you can use the details in Contact Us at the end of this Privacy Statement to request a copy of Our Privacy Policy.

Consent

You agree to Us collecting, holding, using and disclosing your personal information as set out in Our Privacy Policy when you: (i) provide Us with your personal information; or (ii) apply for, use or renew any of Our products and services.

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Personal information about others

If you provide Us with personal information about another person, then you must: (i) have their consent to do so; and (ii) tell them that you are disclosing their personal information to Us and provide them with a copy of this Privacy Statement.

How we collect your personal information

We collect your personal information directly from you, your agents and through others including the parties listed in Our Privacy Policy. This includes Our agents and service providers. We will use a variety of methods to collect your personal information from these parties, including written forms, telephone calls and electronic delivery.

Not giving us your personal information

You may choose not to give Us your personal information. However, this may affect Our ability to provide you with any, some or all of the features of Our products or services, including processing a claim.

How we handle your personal information

We will use your personal information for the purposes We collected it. This usually includes: (i) providing you with assistance, a product or service you have requested; (ii) handling claims and complaints you have made; and (iii) facilitating Our business functions and operations.

Your personal information may also be used for other purposes that are set out in Our Privacy Policy.

We may disclose your personal information to other members of WRBC, agents or service providers (either yours or Ours), other insurers, reinsurers, persons involved in a claim and other parties set out in Our Privacy Policy. These disclosures will be for the same purposes described above or as otherwise permitted by law.

Overseas Disclosure

Sometimes We need to provide your personal information to, or get personal information about you from, persons or organisations located overseas. We will do this for the same purposes as in the 'How we handle your personal information' section above.

The complete list of countries is contained in Our Privacy Policy.

From time to time, We may need to disclose your personal information to, and collect your personal information from, persons and organisations located in countries that are not on the list.

Marketing

Every now and then We might let you know – including via email, telephone or online - about news, products and services that We think may be of interest to you.

We will engage in marketing unless you tell Us otherwise. We want you to be able to exercise your marketing preferences. Accordingly, you can contact Us to update your marketing preferences by using the details in Contact Us below. Alternatively, you can simply follow the unsubscribe instructions in the relevant communication. More information about Our marketing practices can be found in Our Privacy Policy.

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Access, correction and complaints

You have the right to request access and correct your personal information held by Us. Our Privacy Policy provides information about how you can: (i) access your personal information; (ii) ask Us to correct your personal information; and (iii) complain about a breach of the APPs and how We will deal with such a complaint.

Contact Us

www.berkleyinaus.com.au

02 9275 8566

privacy@berkleyapac.com

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Miscellaneous Professions

Professional Indemnity Insurance

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Miscellaneous Professions

Professional Indemnity Insurance

This is a claims made and notified insurance policy.

Section 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.

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Section 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.

Exclusion 4.22 shall not apply to this exclusion.

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 4.23.

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;

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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, the person reconciling the Insured's bank statements is a different person to the one that operates those bank accounts.

The cover provided by this extension is not subject to Exclusion 4.14.

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.

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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 4.15.

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 We consider appropriate having regard to the nature of the risk to be assumed by Us.

In the event the Insured does not accept the terms offered or the amount of any additional premium, the Insured may cancel the policy in accordance with clause 7.3.

2.8 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 4.11 limits the cover provided for Contractual Liability in certain circumstances.

2.9 Joint Venture/Consortium

We will indemnity the Insured for:

2.9.1 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

2.9.2 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;

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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.

2.10 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:

2.10.1 any principal, partner or director of the Named Insured - $650.00; and

2.10.2 any employee of the Named Insured - $250.00.

2.11 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 the 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.

2.12 Mitigation Costs

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

2.12.1 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

2.12.2 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 circumstances arises out of the conduct of the Professional Business;

b) such fact, matter or circumstance is notified to Us as soon as practicable upon being discovered by the Insured, during the Policy Period and prior to the Insured incurring any such mitigation costs or expenses;

c) no admission of liability (whether by word, conduct or otherwise) is made by the Insured;

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d) 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;

e) We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension;

f) cover afforded under this extension will not include any Defence Costs; and

g) 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.

2.13 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 or disciplinary proceeding arising out of the conduct of the Professional Business 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.

2.14 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 may be covered under this policy in the event of a Claim.

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.

2.15 Run-Off Cover

We agree in the event of the Named Insured;

2.15.1 ceasing to exist or operate, being consolidated with, merged into or acquired by any other entity; or

2.15.2 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;

coverage under this policy 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 event detailed in clause 2.15.1 or 2.15.2 occurred, unless agreed in writing by Us.

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2.16 Severability

Where the Insured comprises more than one entity, any conduct on the part of an Insured whereby such Insured failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth) or 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:

2.16.1 such other Insured is entirely innocent of and has no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Insured;

2.16.2 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

2.16.3 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).

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

2.17 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.

2.18 Continuous Coverage

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:

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

2.18.2 We continued without interruption to be the professional indemnity insurer of the Insured from the time mentioned in paragraph 2.18.1 above up until the Policy Period;

2.18.3 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;

2.18.4 neither the Claim nor the fact, matter or circumstance has previously been notified to Us or to any other insurer.

2.18.5 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;

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2.18.6 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;

2.18.7 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

2.18.8 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 2.18.3 above, or under this policy. The terms of this policy otherwise apply.

The cover provided by this extension is not subject to Exclusion 4.1.2.

2.19 Appointed Sub-Consultants

2.19.1 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-contractor, sub-consultant or agent in the conduct of the Professional Business.

2.19.2 We will indemnify any appointed sub-contractor, sub-consultant or agent as if they were an employee of the Named Insured, PROVIDED ALWAYS THAT:

a) at least 90% of such sub-contractor, sub-consultant or agent'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-contractor, sub-consultant or agent, 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.

2.20 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:

2.20.1 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;

2.20.2 Our written consent is obtained within thirty (30) days of the first of such Defence Costs being incurred;

2.20.3 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

2.20.4 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.

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2.21 Claim Preparation Costs

We will indemnity 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:

2.21.1 cover afforded under this extension will not include any Defence Costs; and

2.21.2 the maximum aggregate amount payable under this extension is $25,000.

2.22 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:

2.22.1 the conduct giving rise to the Claim was not intentional, wilful, reckless or deliberate;

2.22.2 indemnification is permitted at law;

2.22.3 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

2.22.4 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 4.3 or Exclusion 4.6.

2.23 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:

2.23.1 cover afforded under this extension will not reinstate or increase the Indemnity Limit or extend the Policy Period; and

2.23.2 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.

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Section 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

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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 4.14.

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 (Cth);

then, for the purposes of Automatic Extension 2.18 “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 may 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 having regard to the nature of the risk to be assumed by Us;

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.

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

In the event the Insured does not accept the terms offered or the amount of any additional premium, the Insured may cancel the policy in accordance with clause 7.3.

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Section 4. 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:

4.1 Previously Known Claim or Circumstance

any:

4.1.1 Claim made upon the Insured prior to the inception of this policy;

4.1.2 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

4.1.3 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

4.1.4 fact, matter or circumstance which was notified by the Insured to any prior insurer.

4.2 Trading Losses and Insolvency

4.2.1 any trading losses or trading liabilities or debts incurred by any business managed or carried on by the Insured; or

4.2.2 the insolvency of the Insured.

4.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages

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

4.4 Nuclear Risks

4.4.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

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

4.5 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:

4.5.1 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;

4.5.2 riots, strikes or civil commotion;

4.5.3 any Act of Terrorism; or

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4.5.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 4.5.1 to 4.5.3 above.

4.6 Asbestos, Toxic Mould and Pollution

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

4.7 USA/Canada

4.7.1 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

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

4.8 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.

4.9 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.

4.10 Liability Involving Transport or Property Owned by the Insured

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

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

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

4.11 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:

4.11.1 to pay liquidated damages or any penalty; or

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

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4.12 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.

4.13 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.

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

any act, error or omission of any Insured 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.

4.15 Infringement of Intellectual Property Rights

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

4.16 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.

4.17 Associated Companies

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.

4.18 Retroactive Date

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

4.19 Listed Human Disease

a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

4.20 Cyber Liability & Social Engineering

4.20.1 the unauthorised access to or use of any Computer System owned, operated by or licensed to the

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Insured; or

4.20.2 Social Engineering Fraud.

4.21 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.

4.22 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.

4.23 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.

4.24 Deliberate Defamation

any deliberate or intentional libel, slander or defamatory statements.

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Section 5. Definitions and Interpretations

The following definitions of each word, words or phrase appearing in the title are applicable to all Policy sections. All words appearing in the title also include the plural or singular of those words.

5.1 Act of Terrorism

Means activity that:

5.1.1 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

5.1.2 appears to be intended to:

a) intimidate or coerce a civilian population;

b) disrupt any segment of the economy of a government de jure or de facto, state or country;

c) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or

d) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

5.2 Claim

Means:

5.2.1 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;

5.2.2 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

5.2.3 for the purpose of Automatic Extension 2.22, any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty.

5.3 Computer System

Means an information technology system made up of one or more items of computer hardware, software, or programmes and the electronic data stored thereupon that share a central storage system, and any other peripheral devices. Computer System shall also include any electronic devices and/or electrical equipment.

5.4 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.

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5.5 Cooperate

Means that the Insured:

5.5.1 assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available;

5.5.2 will have adequate internal systems in place, which will allow ready access to material information; and

5.5.3 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.

5.6 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.

5.7 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.

5.8 Excess

Means that:

5.8.1 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;

5.8.2 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.

5.9 Fine or Penalty

Means:

5.9.1 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

5.9.2 any compensatory civil penalty.

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5.10 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.

5.11 Insured

Means:

5.11.1 the Named Insured;

5.11.2 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;

5.11.3 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

5.11.4 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.

5.12 Listed Human Disease

Means:

5.12.1 any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or

5.12.2 any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced;

regardless of when the disease is so listed or identified.

5.13 Named Insured

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

5.14 Policy Period

Means the period shown in the Schedule.

5.15 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.

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5.16 Preceding Policy

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

5.17 Professional Business

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

5.18 Schedule

Means the document entitled 'Schedule' that relates to this insurance.

5.19 Social Engineering Fraud

Means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

5.19.1 transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;

5.19.2 transferring or delivering any property to another person or entity;

5.19.3 revealing confidential information; or

5.19.4 changing or altering bank account or payment details of any person or entity.

5.20 We, Us, Our

Means Berkley Insurance Company (limited company incorporated in Delaware, USA) ABN 53 126 559 706 | AFSL 463129 t/as Berkley Insurance Australia.

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Section 6. Claims Conditions

The following conditions apply to this insurance:

6.1 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

australiaclaims@berkleyinaus.com.au

Berkley Insurance Australia

PO Box Q296

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6.2 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.

6.3 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.

6.4 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:

6.4.1 We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy in respect of such 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

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6.4.2 We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy in respect of such Claim 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.

6.5 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.

6.6 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.

6.7 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.

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Section 7. 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):

7.1 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.

7.2 Terms of Payment

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

7.3 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.

7.4 Subrogation

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

7.5 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

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

7.5.2 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).

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7.6 Alteration to Risk

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

7.6.1 any material change in the nature of the advice or professional services offered by an Insured;

7.6.2 any cancellation or suspension, or loss of or condition imposed, upon any licence, registration or other authority required by the Insured to conduct the Professional Business; and/or

7.6.3 an Insured going into bankruptcy, receivership, liquidation or any other form of external administration (whether or not it is voluntary), 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.

Where the Insured fails to notify Us as required under this clause or there is any material alteration to the risk during the Policy Period, We may be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

7.7 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.

7.8 Sanctions

We are not liable to make any payment under this Policy where such payment would be in violation of any sanction, prohibition or restriction with which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or the United States of America.

7.9 Headings and Notes

Headings and notes are for information purposes only and are not to be construed as part of this insurance. This clause shall not apply to Section 5 – Definitions.