

Combined Healthcare Protection – Natural Therapies Policy

Wording Document

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Important Information

The Important Information detailed in A to D 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.

Binding Authority

In effecting this contract of insurance, Arthur J Gallagher & Co. (Aus) Limited (AJG) is or will be acting under an authority given to it by Berkley Insurance Company trading as Berkley Insurance Australia (BIA) to effect the contract. AJG will be effecting the contract of insurance as agents of BIA and not of you as the Insured. AJG is authorised to provide Specialty Risks under this authority.

Please read the following information

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.

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.

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

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SYDNEY NSW 2000

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Contact Details

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1 Malpractice

This section only forms part of your Policy when Section 1 – Malpractice is shown as Included in the Schedule.

4.1 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 for any Claim, arising out of the provision of professional advice, treatment or services in the course of the Business provided that:

- 1.1.1 the person providing the professional advice, treatment or services is Qualified to do so or is currently undergoing training by a recognised training body in the service they are providing;
- 1.1.2 the advice or treatment is listed in the Schedule; and
- 1.1.3 the act, error or omission giving rise to the Claim took place during the Policy Period within the Territorial Limits.

1.2 Limit of Liability

Our maximum liability under this section shall not exceed the Indemnity Limit specified in the Schedule.

Section 1, subject to Extension 1.3 "Reinstatement of Indemnity Limit," the Indemnity Limit is to be applied as an aggregate limit in respect of the sum total of all Claims notified during the Policy Period.

EXTENSIONS APPLICABLE TO SECTION 1

We will provide the following cover under Section 1 only, 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.

1.3 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 PROVIDED ALWAYS THAT:

- 1.3.1 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
- 1.3.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims and Defence Costs.

1.4 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), Trade Practices Act 1974 (Cth) or any State or Territory Fair Trading Act but only where such conduct:

- 1.4.1 constitutes a contravention of such statute because it:
 - 1.4.1.1 is misleading or deceptive or likely to mislead or deceive; or
 - 1.4.1.2 is the making of a false or misleading representation; or
 - 1.4.1.3 is unconscionable; or
 - 1.4.1.4 is in breach of a warranty implied into a contract for the provision of services by any of the above Acts; and
- 1.4.2 is not intentional.

1.5 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 provision of the Business services 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 8.13.

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

1.6 Dishonesty of Insured Persons

We will indemnify the Named Insured 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:

- 1.6.1 We will not indemnify the Named 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;
- 1.6.2 We will not indemnify the Named Insured in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;
- 1.6.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 1.6.4 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;
- 1.6.5 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;
- 1.6.6 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;
- 1.6.7 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;
- 1.6.8 We will only be liable to indemnify the Named 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;
- 1.6.9 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;
- 1.6.10 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
- 1.6.11 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 is a different person to the one that operates those bank accounts.

The cover provided by this extension is not subject to Exclusions 1.22 or 8.3.

1.7 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 Insured.

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

1.8 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 provision of the Business.

1.9 Infringement of Copyright or Patents

We will indemnify the Insured 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 provision of the Business in Australia. The cover provided by this extension is not subject to Exclusion 1.23 Intellectual Property.

1.10 Contractual Liability

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

Note: Exclusion 8.2 Contractual Liability limits the cover provided for Contractual Liability in certain circumstances.

1.11 Mitigation Costs

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

- 1.11.1 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
- 1.11.2 arising from a fact, matter or circumstance first discovered by the Insured during the Policy Period which might lead to the potential Claim that would be covered under this policy,

PROVIDED ALWAYS THAT:

- 1.11.3 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; and
- 1.11.4 no admission of liability (whether by word, conduct or otherwise) is made by the Insured; and
- 1.11.5 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; and
- 1.11.6 We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension; and
- 1.11.7 cover afforded under this extension will not include any Defence Costs; and
- 1.11.8 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.

1.12 Vicarious Liability

The cover provided by this Policy shall extend to any Claim first made against the Insured during the Policy Period in respect of the Insured's civil liability for compensation and costs directly arising out of a breach of professional duty by any Medical Practitioner whose acts, errors or omissions the Insured is legally liable for in the course of the exercise and provision of the Business provided that such coverage shall not extend to any such Medical Practitioner or third party.

1.13 Emergency First Aid

The cover provided by this Policy shall extend to any Claim up to the Indemnity Limit first made against the Insured during the Policy Period in respect of the Insured's civil liability for compensation arising from medical assistance voluntarily administered, or the failure to provide medical assistance, at the scene of any emergency, accident or disaster by an employee of the Insured provided that the assistance or failure to provide assistance is given at a time when the employee of the Insured is not engaged in a professional capacity by any other person or entity.

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

1.14 Medicare and Medical Fund Fraud

The cover provided by this Policy shall extend to any Claim against the Insured in respect of the Insured's civil liability which would have otherwise been excluded by reason of Exclusion 1.24 Payments or Benefits Received for compensation arising from any Claim made against the Insured as a result of a fraudulent or dishonest refund claim made against Medicare Australia or any health fund by any employee of the Insured provided that such indemnity shall not be provided to any person who committed or condoned any such act, error or omission.

The maximum aggregate amount payable under this extension is \$25,000.

1.15 Privacy Complaints and Claims

The cover provided by this Policy shall extend to any Claim against the Insured in respect of the Insured's civil liability arising directly out of any unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the Privacy Act 1988 (Commonwealth), Health Records Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand.

1.16 Run-Off Cover

We agree that, in the event that the Named Insured or any of its subsidiaries cease to exist or operate or are consolidated with, merged into or acquired by any other entity, then the cover provided under this policy with respect to such Named Insured or subsidiary will continue until the expiry date of the Policy Period, 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 Insured entity or subsidiary ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by Us.

1.17 Students covered as an Insured

If the Insured is a recognised training body then the students currently undergoing training by the Insured will be covered as an Insured whilst carrying out their required coursework either on or off campus.

EXCLUSIONS APPLICABLE TO MALPRACTICE SECTION 1

Under Section 1 of this Policy, 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:

1.18 Medical Practitioners Exclusion

the liability at law of a Medical Practitioner to a patient, where such liability arises directly from the Medical Practitioner's activities as a Medical Practitioner including, but not limited to diagnosis, treatment, medical advice, prescribing or supplying medicine or a breach of any State or Federal health or medical laws or regulations in force in Australia and its external territories, except as provided for in extension "Vicarious Liability".

1.19 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 unless a Claim arises directly as a consequence of professional advice and/ or a breach of professional duty in the course of the Business provided by the Insured.

1.20 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.

1.21 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 the Business.

1.22 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.

1.23 Intellectual Property

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

1.24 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 Business.

1.25 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.

1.26 Retroactive Date

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

1.27 Medical Services

1.27.1 the provision or failure to provide Obstetric Services.

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

1.27.3 the administration or provision of medicines which, by law are required to be prescribed by a Medical Practitioner, unless the medicine provided has been so prescribed

For the purposes of this Exclusion Obstetric Services shall mean a breach of professional duty which occurs in any way associated with pregnancy or childbirth after the onset of:

1.27.4 labour; or

1.27.5 contractions.

1.28 Intoxicants and Drugs

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

1.29 Midwifery Exclusion

the practice of midwifery.

1.30 Prior or Pending Claims and Circumstances

1.30.1 Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Insured before the Policy Period, or

1.30.2 Claim arising from the same or essentially the same cause as any Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Insured before the Policy Period, or

1.30.3 fact, circumstance, act, omission or claim which, prior to the Policy Period, any Insured is aware may result in or could reasonably be expected to result in a Claim or Inquiry, or

1.30.4 Claim, circumstance or any Inquiry of which notice has been given, or should have been given, under any policy existing or expired before or on the inception date of this Policy or which was included on the proposal form.

1.30.5 Claims, Loss, loss or Inquiry, arising from an event which occurred before this Policy's Retroactive Date (if any), where such a date is specified in the Policy Schedule.

1.31 Pollution

actual, alleged, or threatened discharge, release or escape of Pollutants, or the containment, clean up, removal, treatment, or monitoring of such Pollutants.

1.32 Student

1.32.1 if the Insured named in the Schedule is a student currently undergoing training that is not with a recognised training body in the treatment that they are providing then they are not covered whilst carrying out their required coursework either on or off campus.

1.32.2 For any claim in connection with a student carrying out activities which they have not been authorised to carry out by the teaching institution in which they are enrolled.

2 Public Liability

This section only forms part of Your Policy when Section 2 – Public Liability is shown as Included in the Schedule.

INSURING CLAUSES

2.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit against civil liability for compensation arising from:

2.1.1 Personal Injury to any person; and/or

2.1.2 Property Damage other than to property belonging to the Insured;

first happening during the Policy Period within the Territorial Limits as a result of an Occurrence in connection with the Business .

2.2 Limit of Liability

2.2.1 Section 2, the Indemnity Limit is to be applied as an aggregate limit in respect of the sum total of each Claim for Bodily Injury and/or Property Damage occurring during the Policy Period in the course of the provision of the Business.

EXTENSIONS APPLICABLE TO SECTION 2

We will provide the following cover but only under Section 2 of this policy, 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.

2.3 Additional Coverage for Plate Glass Breakage

We will indemnify the Insured for the cost of replacement of plate glass window at the premises from which the Insured provides their the Business, where the Insured is required under their lease to indemnify their landlord for breakage of plate glass window, PROVIDED ALWAYS THAT:

2.3.1 breakage of the plate glass window occurs during the Policy Period and is reported to Us within 7 days;

2.3.2 coverage under this extension is subject to a \$500 excess; and

2.3.3 We are only liable for the costs of the glass and are not liable for the costs of any signage or anything that was on the glass.

2.4 Leased or Rented Premises

We will indemnify the Insured for Property Damage to premises (including the fittings and fixtures) leased or rented to the Insured for the purpose of the Business provided always that We will not provide indemnity against:

2.4.1 any contractual liability; or

2.4.2 the first \$250 of each and every occurrence of Property Damage caused other than by fire or explosion

Notwithstanding Exclusion 8.2 and Clause 2.4.1 above, We will indemnify a lessor with whom the Insured has entered into a written agreement for the rental or lease of premises (including the fittings and fixtures) for the purpose of the Business for Property Damage PROVIDED ALWAYS THAT:

2.4.3 coverage provided to the lessor will be no more extensive than the coverage that would be provided to the Insured if they were held legally liable for the Property Damage; and

2.4.4 coverage will only be provided where the liability arises out the Insured's use of the premises.

The cover provided by this extension is not subject to Exclusion 8.6.

2.5 Indemnity to Other Persons

We will also indemnify as if a separate policy had been issued to each:

- 2.5.1 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;
- 2.5.2 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:

- 2.5.3 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; and
- 2.5.4 nothing in this Extension shall increase Our liability to pay any amount exceeding the Indemnity Limit applicable to Section 2 regardless of the number of parties claiming to be indemnified.

2.6 Cross Liabilities

If the Insured comprises more than one party, We will provide indemnity to each such Insured in the same manner and to the same extent as if a separate policy had been issued to each of them, PROVIDED ALWAYS THAT nothing in this Extension shall increase Our liability to pay any amount exceeding the Indemnity Limit of each Section, regardless of the number of persons claiming to be indemnified.

2.7 Students covered as an Insured

If the Insured is a recognised training body then the students currently undergoing training by the Insured will be covered as an Insured whilst carrying out their required coursework either on or off campus.

EXCLUSIONS APPLICABLE TO SECTION 2

We shall not provide indemnity against any legal liability of whatsoever nature:

2.8 Mechanically Propelled Vehicles

caused by or arising from the ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:

- 2.8.1 for which compulsory insurance or security is required under any legislation governing the use of the vehicle;
- 2.8.2 where indemnity is provided by any other insurance effected by or on behalf of the Named Insured or the Insured.

PROVIDED ALWAYS THAT this Exclusion shall not apply to liability caused by or arising from:

- 2.8.3 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;
- 2.8.4 the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle;
- 2.8.5 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.

2.9 Products Supplied

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.

2.10 Damage to Property

in respect of Property Damage to any property:

- 2.10.1 belonging to the Insured;
- 2.10.2 in the physical or legal care, custody or control of the Insured, other than;
- 2.10.3 personal effects of any visitor, director, partner or employee of the Insured;
- 2.10.4 vehicles and their contents in any car park owned by the Insured not operated for reward.
- 2.10.5 all other property up to a limit of \$100,000 in the aggregate in any one Policy Period.

2.11 Professional Indemnity and Products Liability

which is indemnifiable under Section 1 or Section 3 of this policy.

3 Products Liability

This section only forms part of Your Policy when Section 3 – Products Liability is shown as Included in the Schedule.

3.1 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:

- 3.1.1 Personal Injury to any person;
- 3.1.2 Property Damage other than to property belonging to the Insured

first happening during the Policy Period anywhere within the Territorial Limits as a result of an Occurrence and caused by any Product.

3.2 Limit of Liability

Our liability 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 Indemnity Limit in the Schedule.

- 3.2.1 Section 3, the Indemnity Limit is to be applied as an aggregate limit in respect of the sum total of all Claims for Bodily Injury and/or Property Damage occurring during the Policy Period caused by Products supplied in the course of the Business.

3.3 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 Clauses 3.1 and Defence Costs covered by Insuring Clause 6.1, PROVIDED ALWAYS THAT:

- 3.3.1 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
- 3.3.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims and Defence Costs.

EXCLUSIONS APPLICABLE TO SECTION 3

Under Section 3 of this policy, 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:

3.4 Product Recall

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 Products or any refund made in respect of any of the Insured's Products.

3.5 Aviation and Marine Products

any Product which to the knowledge of the Insured is intended for:

- 3.5.1 use in or on any aircraft or aero spatial device; or
- 3.5.2 aviation or aero spatial purposes; or
- 3.5.3 use in the safety or navigation or navigation of marine craft of any sort.

3.6 Products for Use in the United States of America or Canada

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 Us.

3.7 Products in the custody or under the control of the Insured

any Products supplied whilst in the custody or under the control of the Insured.

3.8 **Essential Oils**

the internal application or ingestion of essential oils.

3.9 **Property Damage**

property damage to the Insured's Products if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability.

3.10 **Malpractice and Public Liability**

any Claim which is indemnifiable under Section 1 or Section 2 of this policy.

4 Contents Cover (Optional)

4.1 The Cover

If stated as covered next to this section in the Schedule then We will pay for any unintended damage to the Insured Property up to the Limit of Liability *PROVIDED THAT* such damage occurs during the Period of Insurance and is not caused by:

- 4.1.1 the sea (which without limiting the foregoing includes any ocean, bay, port and/or tidal water);
- 4.1.2 flood (which without limiting the foregoing includes any water damage caused by blockages or backing up of pipes or drains);
- 4.1.3 earthquake, subterranean fire or volcanic explosion;
- 4.1.4 spontaneous combustion, fermentation or heating;
- 4.1.5 persons taking part in riots, civil commotions or labour disturbances, or persons of malicious intent acting on behalf of or in connection with any political organisation;
- 4.1.6 wear and tear, denting, scratching, any process of cleaning, repairing or restoring any property, or the application of electrical energy, action of light or atmospheric conditions, moth, vermin, corrosion or any other gradually operating cause;
- 4.1.7 theft from any road vehicle unless the vehicle is fully enclosed and all doors windows and other openings, windscreen and boot at the time of the theft were left closed and securely locked; and
- 4.1.8 unless the vehicle has been broken into by violent and forcible means;
- 4.1.9 theft from the open air or where the property has been left unattended;
- 4.1.10 theft committed by any family member or by any person who would benefit from this insurance;
- 4.1.11 theft committed by any person lawfully at the premises at which the property is situated;
- 4.1.12 delay, confiscation or detention by customs or other lawful activity;
- 4.1.13 damage discovered more than 30 days after the occurrence of the damage;
- 4.1.14 theft not reported to police;
- 4.1.15 mechanical or electrical breakdown derangement; or
- 4.1.16 tools of trade whilst they are being used.

4.2 Basis of Settlement

We will pay at Our own option the cost of repair, replacement or reinstatement of the Insured Property to a condition substantially the same as but not better or more extensive than its condition when new.

4.3 Cover for specified and unspecified items

Our liability under Section 4.1 of this policy for:

- 4.3.1 unspecified items is \$1,000 per item;
- 4.3.2 specified items is \$75,000 or the specified value of the Insured Property; and
- 4.3.3 all claims in the Period of Insurance is the lesser of \$75,000 or the Limit of Liability.

4.4 Section Exclusions (only applicable to Section 4)

We shall not pay for damage to or loss of:

- 4.4.1 any mobile phones or electronic tablets; or
- 4.4.2 any computer that was damaged as a result of falling; or
- 4.4.3 cash.

5 Legal Expenses (*Optional*)

5.1 The Cover

If stated as covered next to this section in the Schedule then We will indemnify the Insured up to \$25,000 in total in respect of legal costs and expenses as set out in the Indemnity Granted part of this section if:

- 5.1.1 there are reasonable grounds for pursuing or defending the legal proceedings;
- 5.1.2 it is reasonable for legal costs and expenses to be provided in the particular case;
- 5.1.3 the Insured has used the Insured's best endeavours to include an Alternative Dispute Resolution (ADR) clause in all contracts relating to the business;
- 5.1.4 the dispute is covered by the Insured Events specified in this section;
- 5.1.5 the dispute occurs within the period of insurance;
- 5.1.6 the dispute occurs within Australia;
- 5.1.7 the legal proceedings take place in Australia and only Australian law applies;
- 5.1.8 the dispute is not excluded by any of the Section Exclusions (*only applicable to Section 5*);
- 5.1.9 the dispute is not excluded by any of the Policy Exclusions (*applicable to Section 1,2,3,4, and 5*) in the policy;
- 5.1.10 the Insured has complied with the Section Conditions (*only applicable to Section 5*); and
- 5.1.11 the Insured has complied with the Policy Conditions (*applicable to Sections 1,2,3,4 and 5*) of the policy,

5.2 Insured Events:

The term 'Insured Events' when used above in this section refers to:

5.2.1 Employment:

5.2.1.1 Contract Disputes:

A dispute arising from a contract or alleged contract of employment with an employee, ex-employee or a prospective employee.

5.2.1.2 Acts or omission of employees:

A dispute arising from any actual or alleged act or omission of the Insured or an Insured's employee arising out of or in the course of their normal employment in the Business which leads to:

- 5.2.1.2.1 their prosecution in a court of criminal jurisdiction;
- 5.2.1.2.2 civil proceedings being taken against them under any anti-discrimination legislation; or
- 5.2.1.2.3 civil proceedings being taken against them as trustee of a superannuation fund.

5.2.2 Employers prosecution defence

Any act or omission which leads to the Insured's prosecution in a court of criminal jurisdiction arising out of the Insured acting as an employer but does not mean a prosecution for the defence of which cover is provided in paragraphs numbered 5.2.1 or 5.2.5 of the definition of Insured Events.

5.2.3 Contract disputes

A dispute concerning a contract for the buying, renting, or supply of goods or services in relation to the Business.

5.2.4 Property dispute

A dispute arising from:

- 5.2.4.1 loss of or damage to land and/or buildings owned by the Insured or for which the Insured is responsible for the purpose of the Business, or
- 5.2.4.2 loss of or damage to goods owned by the Insured or for which the Insured is responsible whilst contained in or on the land and/or buildings referred to in paragraph 5.2.4.1 above but not:
 - 5.2.4.2.1 a dispute arising under a contract;
 - 5.2.4.2.2 a dispute arising from goods lent, leased or hired to third parties;

5.2.4.2.3 a dispute arising from goods at premises not occupied by the Insured unless they are there for the purposes of installation or use in work to be carried out by the Insured.

5.2.5 Trade Practices Act dispute

A dispute arising from:

5.2.5.1 the operation of the Trade Practices Act 1974; or

5.2.5.2 any act or omission arising out of the Trade Practices Act 1974 which leads to the prosecution in a court of criminal jurisdiction of the Insured or an Insured's employee.

5.2.6 Right to practice

A dispute in relation to the Insured's legal right to practice in terms of the rules and by-laws of the association of which the Insured is an associated member but does not mean any matter covered by Insured Events 5.2.1 to 5.2.5.

5.2.7 Attendance for jury service

The attendance of the Insured or an employee for jury service.

5.3 Indemnity Granted:

5.3.1 Employment

5.3.1.1 Contract disputes: We will pay the Insured's reasonable legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to employment contract disputes in:

5.3.1.1.1 the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;

5.3.1.1.2 the defence by the Insured of any claim or counter claim;

5.3.1.1.3 the defence of a prosecution against the Insured; and

5.3.1.1.4 the appeal or the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

5.3.1.2 Acts or omission of employees: We will pay the Insured's legal costs and expenses and opponent's legal costs incurred in relation to acts or omissions of employees for:

5.3.1.2.1 the defence by the Insured of any claim or counter claim; and

5.3.1.2.2 the defence of a prosecution against the Insured.

5.3.2 Employers prosecution defence

We will pay the Insured's reasonable legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in employers prosecution defence for:

5.3.2.1 the defence of a prosecution against the Insured; and

5.3.2.2 the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

5.3.3 Contract disputes

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to contract disputes (other than employment contract disputes) for:

5.3.3.1 the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;

5.3.3.2 the defence by the Insured of any claim or counter claim;

5.3.3.3 the defence of a prosecution against the Insured; and

5.3.3.4 the defence of an appeal against judgement provided We are given 6 clear business days notice before the time for making the appeal or application has expired and We consider there to be a reasonable chance of success.

5.3.4 Property dispute

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to a property dispute, for:

5.3.4.1 the pursuit of the Insured's legal rights to obtain remedy or to recover damages and costs from other parties;

- 5.3.4.2 the defence by the Insured of any claim or counter claim;
- 5.3.4.3 the defence of a prosecution against the Insured; and
- 5.3.4.4 the defence of an appeal against judgment provided We are given 6 business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.
- 5.3.5 Trade Practices Act disputes

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in Trade Practices Act disputes, for:

 - 5.3.5.1 the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;
 - 5.3.5.2 the defence by the Insured of any claim or counter claim;
 - 5.3.5.3 the defence of a prosecution against the Insured;
 - 5.3.5.4 the defence of any claim, counter claim or prosecution against an Insured's employee;
 - 5.3.5.5 the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.
- 5.3.6 Right to Practice

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to a right to practice dispute, for:

 - 5.3.6.1 the pursuit of the Insured's legal rights to obtain remedy or to recover damages and costs from other parties;
 - 5.3.6.2 the defence by the Insured of any claim or counter claim;
 - 5.3.6.3 the defence of a prosecution against the Insured; and
 - 5.3.6.4 the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.
- 5.3.7 Attendance for jury service

We will pay any reasonable legal costs and expenses in relation to the Insured or an employee attending jury service.

5.4 Section Conditions (only applicable to Section 5):

- 5.4.1 Recovery of legal costs and expenses

If We have paid a claim to the Insured, and the Insured recovers an amount for costs as part of the award or settlement, the Insured must repay this amount to Us.
- 5.4.2 Claims consent
 - 5.4.2.1 The Insured must obtain and forward to Us upon Our request and at the Insured's expense a written opinion from the Insured's legal practitioner, and where necessary counsel, on the merits of the claim or legal proceedings. If the claim is subsequently admitted by Us the Insured's costs in obtaining these opinions will be covered under this section subject to Our total limit of indemnity under this section.
 - 5.4.2.2 If We refuse to accept or decide to discontinue a claim We will provide the Insured with Our reasons. If the Insured commences or continues the claim or legal proceedings and is successful We will pay legal costs and expenses as if We had given Our consent in the first instance *provided that* the reason or reasons the claim was refused or discontinued by Us were not because of an exclusion under the policy, non-compliance by the Insured with a condition of the policy or the fact that the claim fell outside the cover provided by the policy.
- 5.4.3 Representation
 - 5.4.3.1 Upon making a claim the Insured may either nominate a legal practitioner to act for the Insured or We will nominate a solicitor of Our choice.
 - 5.4.3.2 We reserve the right to refuse the Insured's nomination of legal practitioner without giving any reason and prior to Our acceptance of the Insured's nomination of a legal practitioner We may make any enquiries We deem appropriate with respect to that legal practitioner.
 - 5.4.3.3 We reserve the right to instruct the Insured to terminate the services of the appointed legal practitioner. If so instructed the Insured must terminate the services of the appointed legal practitioner and appoint a new legal practitioner to act for the Insured which shall be nominated by Us.

- 5.4.3.4 We reserve the right to take over and conduct in the Insured's name the pursuit, defence or settlement of any claim or legal proceedings including any appeal. The Insured must co-operate with Us fully in any proceedings which We may take and We will have full discretion in the conduct of those proceedings and in the settlement of any claim.
- 5.4.4 Control of claim
- 5.4.4.1 We must have direct access to the appointed legal practitioner at all times. The Insured must co-operate fully with Us in all respects and keep Us fully and continually informed of all material developments in the legal representation or proceedings. If We ask, the Insured must instruct the appointed legal practitioner to produce to Us immediately any documents, information or advice in their possession and the Insured must give them any instructions in relation to the conduct of the claim that We may require.
- 5.4.4.2 We are not liable for the costs or fees of counsel, accountants or any expert witness unless We have given Our prior approval to the appointment of that person and agreed the proposed fee.
- 5.4.4.3 Any agreement, undertaking or promise made or given by the Insured to the appointed legal practitioner or by either to any witness expert or agent will not in any way affect the legal costs and expenses payable.
- 5.4.4.4 The appointed legal practitioner or the Insured must inform Us immediately in writing of any offers made with a view to settling the claim and
- 5.4.4.4.1 no agreement to settle which may result in a claim for indemnity under this section may be made without Our prior approval; and
- 5.4.4.4.2 if the Insured does not accept any offer or payment but that amount is equal to or in excess of the total damages eventually recovered by the Insured, We shall have no liability in respect of any legal costs and expenses or any legal liability of the Insured for the opponent's legal costs incurred after that offer or payment unless, upon being notified of the offer or payment into court, We agree to the continuation of the legal proceedings.
- 5.4.4.5 If in any legal proceedings the Insured is not successful in the Insured's claim or defence, no appeal or other proceedings will be covered under this policy unless We are notified in writing of the intention to appeal no later than six clear days before the time for making an appeal expires and We notify the Insured that We consider that there are reasonable prospects of such appeal succeeding.
- 5.4.4.6 If We require, the Insured must instruct the appointed legal practitioner to have the Insured's legal costs and expenses or opponent's legal costs and expenses taxed, assessed or audited by the relevant authority.
- 5.4.4.7 If for any reason the appointed legal practitioner refuses to continue acting for the Insured or if the Insured withdraws its instructions from the appointed legal practitioner then Our liability will cease forthwith unless in Our absolute discretion We agree to the appointment of another legal practitioner to continue with the claim.
- 5.4.4.8 If the Insured withdraws from the legal proceedings or proposed legal proceedings without Our prior agreement, then the legal costs and expenses and opponent's legal costs will become the Insured's responsibility and We will be entitled to be reimbursed by the Insured for any costs paid or incurred during the course of the legal proceedings or proposed legal proceedings, including any legal costs and expenses We consider We are obliged to pay on the Insured's withdrawal from the claim.
- 5.4.4.9 Where the Insured is awarded costs, the Insured must take steps to recover legal costs and expenses which would be the subject of payment under the policy. The legal costs and expenses and attendance expenses actually recovered will be taken into account by Us to reduce Our liability when calculating Our liability under this section.
- 5.4.5 Dispute resolution
- 5.4.5.1 The Insured must, at Our direction, use any ADR process available before taking legal action in respect of any commercial dispute.
- 5.4.5.2 The Insured must use its best endeavours to have any commercial dispute resolved through ADR.
- 5.4.5.3 If the Insured is a party to legal action in connection with a commercial dispute commenced by another party, the Insured must suggest resolution of that commercial dispute by ADR as an alternative to continuing the legal action.

5.5 Excess (only applicable to Section 5):

The Insured must pay the first \$500 of any claim made under this section.

5.6 Section Exclusions (only applicable to Section 5):

We will not be liable for any claim in respect of or arising from or in connection with:

- 5.6.1 civil proceedings where the amount in dispute is less than \$5,000;

- 5.6.2 any act, omission or dispute which occurred or started prior to the commencement of the period of insurance and which the Insured knew or ought reasonably to have known might give rise to a claim or legal proceedings by or against the Insured;
- 5.6.3 legal costs and expenses and opponent's legal costs incurred prior to the written acceptance of a claim by Us;
- 5.6.4 defamation, libel or slander;
- 5.6.5 a dispute with Us arising from any claim made under this policy or any other policy with Us;
- 5.6.6 mining subsidence or land subsidence;
- 5.6.7 fibreglass or asbestos or their derivatives;
- 5.6.8 the use, ownership or possession by the Insured or an Insured's employee of any motor vehicle, boat, vessel, craft or aircraft;
- 5.6.9 disputes concerning patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property and secrecy and confidentiality agreements;
- 5.6.10 disputes concerning undefended debts or concerning debts owed by or to private individuals for non-business purposes;
- 5.6.11 an act, omission or dispute between any two or more parties who are insureds under this policy;
- 5.6.12 a contract of insurance where the dispute arises only in respect of the sum of money or other compensation payable under that contract;
- 5.6.13 monies owed to the Insured, where the claim is made 6 months or more after those monies became due and payable;
- 5.6.14 any matter where the Insured or an insured employee:
 - 5.6.14.1 pursue or defend a claim or legal proceedings without Our consent or in a different manner from that advised by the appointed legal practitioner;
 - 5.6.14.2 fail to give proper instructions in due time to the appointed legal practitioner or counsel appointed by them; or
 - 5.6.14.3 are responsible for delay which is prejudicial to the successful outcome of the claim or legal proceedings.
- 5.6.15 bankruptcy proceedings or the Insured having committed an act of bankruptcy or having made an arrangement with the Insured's creditors or having entered into a deed of arrangement or being in liquidation or part of the Insured's affairs or property being in the care or control of a receiver or administrator.
- 5.6.16 the breach or alleged breach of any professional duty (including but not limited to the provision of advice, treatment or services) by the Insured or an insured employee.
- 5.6.17 damages (including damages associated legal costs and expenses) for Bodily Injury to any person.
- 5.6.18 damage to property (including associated legal costs and expenses).
- 5.6.19 the transit of any goods or property by air or by sea.
- 5.6.20 contamination or pollution.
- 5.6.21 the compulsory purchase, confiscation, nationalisation, requisition or destruction of or restrictions or controls placed on any property.
- 5.6.22 the actual, planned or proposed construction, closure, modification or repair of roads or bridges or the actual, planned or proposed construction or demolition of buildings or other works by or under the order of any inter-governmental, governmental, public or local authority except insofar as the claim relates to accidental damage arising from such activities.
- 5.6.23 payment of fines or other penalties which the Insured or an insured employee may be ordered to pay.
- 5.6.24 costs which the Insured or an insured employee may be ordered to pay by a court of criminal jurisdiction.
- 5.6.25 relating to any criminal or unlawful act committed deliberately or with wilful intent by the Insured or an insured employee.
- 5.6.26 any legal liability which would be covered under Sections 1, 2 and 3.

6 General Extensions

We will provide the following cover under Section 1, Section 2 and Section 3 of this policy, 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

6.1 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 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.

6.2 Advancement of Costs

We will, to the fullest extent permissible by law and subject to the Indemnity Limit and any applicable deductible, advance Costs resulting from a Claim prior to the final settlement of said Claim.

Such advance payments of Costs shall be repayable to Us by the Insured severally according to their respective interests, in the event and to the extent that it is determined that they shall not be entitled under this Policy to payment of such Costs.

6.3 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:

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

6.4 Attendance Compensation

We shall pay the Named Insured, attendance compensation resulting from the attendance of any Insured persons on any one day:

- 6.4.1 at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry as a witness;
- 6.4.2 at an interview in the presence of a lawyer conducting the defence of any Claim for the purpose of composing a witness statement;
- 6.4.3 at a conference or consultation with a barrister for the purpose of preparation in relation to any Claim; and
- 6.4.4 as an observer at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry, provided that We shall only be liable for the attendance of one observer for all Companies per day;
- 6.4.5 and where the attendance is in connection with a Claim.

For the purposes of this extension, attendance compensation means:

- 6.4.6 any principal, partner, director or officer of the Insured - \$650.00 per day; and
- 6.4.7 employee of the Insured - \$250.00 per day.

No deductible is applicable to this extension.

6.5 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.

The cover provided by this extension is not subject to any Insuring Clause under Section 1, 2 or 3.

6.6 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, privacy 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 any Insuring Clause under Section 1, 2 or 3.

6.7 Crisis Costs

We shall pay on behalf of the Named Insured Crisis Loss arising from any Crisis Event which first occurs and is notified to Us during the Policy Period.

The maximum aggregate amount payable under this extension is \$50,000. No deductible is applicable to this extension.

6.8 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:

- 6.8.1 the conduct giving rise to the Claim was not intentional, wilful, reckless or deliberate; and
- 6.8.2 indemnification is permitted at law; and
- 6.8.3 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
- 6.8.4 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 8.3 Fines, Penalties, Punitive, Multiple or Exemplary Damage.

6.9 Retrospective Cover

Subject to:

- 6.9.1 the Insured being covered by a Claims Made policy of insurance relating to its Business immediately prior to the inception date of this policy;

We will indemnify the Insured in accordance with Section 1, 2 or 3 and subject to the conditions and exclusions of this policy for any Claims first made against the Insured after the inception date of this policy which arise directly out of any occurrence or act, error or omission that occurred prior to the inception date of this policy but after the Retroactive Date.

This optional extension shall not indemnify the Insured against any Claim:

- 6.9.2 made upon the Insured prior to the inception of this policy; or
- 6.9.3 in connection with any fact, matter or circumstance known to the Insured at any time prior to the inception of this policy and which the Insured knew, or a reasonable person in the Insured's profession would, in the circumstances, be expected to know or have known might give rise to a Claim against the Insured.

7 Exclusions applicable to Section 2 and Section 3

We shall not be liable to indemnify the Insured under Section 2 or Section 3 of this policy in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with.

7.1 Construction Activities

any earthworks or construction activities of any kind [including the construction, erection, demolition (whether partial or complete), alteration, addition or renovation of buildings, earthworks or structures] by or on behalf of the Insured.

7.2 Libel, Slander or Defamatory Material

the publication or utterance of libel or slander or other defamatory material.

7.3 Rectification of Faulty Work

any claim in respect of the rectification of faulty work performed by or on behalf of the Insured.

7.4 Cyber Liability

7.4.1 alteration of, or damage to; or

7.4.2 a reduction in functionality, availability or operation of;

8.31.1 a computer system or program 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 the 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.

7.5 Loss of Use

for any claim in respect of loss of use of tangible property which has not been physically injured or destroyed resulting from:

7.5.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

7.5.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This Exclusion 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.

7.6 Pollution or Contamination

7.6.1 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 Policy Period; or

7.6.2 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 Policy Period.

7.7 Other Insurance

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 this exclusion shall not operate in respect of a claim by the Company where the Company has entered into the other contract of insurance.

7.8 Underground Services

Property Damage to any underground services except where the Insured has contacted the appropriate authorities to verify the existence and location of underground services and have obtained from them a plan detailing the location of such services prior to commencement of work.

8 Exclusions applicable to Sections 1, 2 & 3

The following exclusions apply to Sections 1, 2 and 3 of this policy.

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

8.1 Asbestos or Toxic Mould

asbestos, asbestosis or toxic mould.

8.2 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:

8.2.1 to pay liquidated damages or any penalty; or

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

8.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fine or penalty or any multiple, exemplary, punitive or aggravated damages, except to the extent covered by Extension 6.8 (Fines and Penalties)

8.4 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.

8.5 Dishonesty, Fraud or Wilful Breach of Duty

8.5.1 any dishonest, fraudulent, criminal or malicious act of any Insured; or

8.5.2 is intended by any 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

8.5.3 is a wilful or reckless breach of statute, contract or duty; or

8.5.4 arising out of conduct which involves wilful breach of duty in relation to the Insured or any breach of Section 182 (Use of information – civil obligations) or Section 183 (Use of position – civil obligations) of the Corporations Act (Cth).

For the purpose of determining the applicability of this Exclusion, the knowledge and conduct of any Insured shall not be imputed to any other Insured. This Exclusion only applies in the event that the foregoing conduct is established by final adjudication by a court or tribunal or by written admission by such Insured.

8.6 Liability Involving Transport or Property Owned by the Insured

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

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

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

8.7 Nuclear Risks & Radiation

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

8.7.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

8.7.3 exposure to magnetic, electric or electromagnetic fields or radiation;

PROVIDED THAT clause 8.7.3 does not apply to Section 1 of the policy.

8.8 USA/Canada

- 8.8.1 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
- 8.8.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

PROVIDED THAT this Exclusion shall not apply to:

- 8.8.3 Section 2 of this policy but only in respect of liability arising out of the temporary presence in the United States of America or Canada of any employee, director or partner of the Named Insured who is normally resident in Australia and who is not performing any manual or supervisory work whatsoever whilst in the United States of America or Canada

8.9 War and Terrorism

- 8.9.1 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot; or
- 8.9.2 civil commotion assuming the proportions of or amounting to an uprising; or
- 8.9.3 military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- 8.9.4 any act or acts of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation; or
- 8.9.5 any action taken in controlling, preventing, suppressing or in any way relating to 8.9.1 to 8.9.3 above.

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

8.10 Workers' Compensation

- 8.10.1 imposed by the provisions of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination; or
- 8.10.2 Personal Injury to any employee or person arising out of and in the course of employment where the Insured is indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any worker's compensation law.

8.11 Trading Losses

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

8.12 Insolvency or Administration

- 8.12.1 an order being made for the winding up of the Named Insured; or
- 8.12.2 the appointment to the Named Insured of a liquidator or a receiver or an administrator or an administrative receiver or a trustee in bankruptcy or, in the
- 8.12.3 case of a voluntary arrangement, a nominee or a supervisor; or
- 8.12.4 a proposal being made by or to the Named Insured, or by or to its creditors, of a composition of debts or scheme for arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise; or
- 8.12.5 in any way whatsoever relating to the solvency or insolvency of the Named Insured.

8.13 Loss of Documents - Magnetic or Electrical Media

the physical loss of or damage to Documents which are stored on magnetic or electrical media unless such Documents 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.

8.14 Students Condition

students undertaking unsupervised work in a competency they are not currently training in.

8.15 Stage Hypnotherapy & Past Life Regression

- 8.15.1 stage and/or entertainment hypnosis/hypnotherapy; or
- 8.15.2 past life regression unless the past life regression is unintentional.

8.16 Eyelash/Eyebrow Tinting/Perming

the provision of eyelash/eyebrow tinting/perm.

8.17 Body Piercing

the provision of body piercing of any kind

8.18 Sun Tanning Cancer

any form of skin cancer including but not limited to melanoma and any resulting injury, disease, disorder or condition of the body or mind caused by or aggravated by the use, operation or maintenance of any sun tanning device or sun tanning treatments or sessions.

8.19 Kinesiology

kinesiology oral testing.

8.20 Spinal Manipulation

any manipulation or adjustment of the spine.

8.21 Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, 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.

8.22 Laser / Intense Pulse Light Condition

any type of Laser Treatment, Intense Pulse Light (IPL) treatment or Variable Pulse Light (VPL) treatment where

- 8.22.1 the equipment used in treatment has not received approval from the Therapeutic Goods Administration (TGA);
- 8.22.2 there has been a reaction to a patch test;
- 8.22.3 either the operator or the client have not worn protective glasses during the treatment;
- 8.22.4 the products have not been applied only using a single use disposable spatula, which is used only once;
- 8.22.5 any part of the equipment that has been in contact with a human body or any bodily fluid and has not been cleaned after each individual treatment;
- 8.22.6 the insured has failed to enquire and record if the client has any of the Conditions or undergone any of the Treatments listed below; or
- 8.22.7 the client has confirmed that they do, or might have, one of the Conditions or undergone any of the Treatments listed below:

Conditions means epilepsy, porphyria, diabetes, psoriasis, dark moles (in the area to be treated), tattoos (in the area to be treated), pregnancy, micropigment, eczema, dermatitis, skin tumours, skin cancer, hypopigmentation, hypopigmentation tanned skin, active melanin present in the skin, is taking any medication resulting in photosensitivity.

Treatments means aromatherapy treatment which involved the use of essential oils, self tanning products within the last 10 days, laser treatment or chemical skin peeling in the area to be treated, or the use of a sunbed in the previous 4 weeks.

8.23 Blood conditions

Human Immunodeficiency Virus (HIV) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof in any way related to Acquired Immune Deficiency Syndrome (AIDS) or any Syndrome or condition of a similar kind.

8.24 Sterilised Instruments

in connection with any instrument having need to contact or penetrate skin tissue unless the instrument has been used once only or sterilised before re-use in accordance with respective State Health Regulations and/or Commonwealth Health Regulations as specified from time to time.

8.25 Work overseas

the Insured or any person employed by the Insured carrying out work not in Australia or New Zealand where the Insured or the person has been, or intended on being, outside of Australia or New Zealand for more than 3 months during the Period of Insurance.

8.26 Molestation

the molestation of, the interference with, the mental abuse of or the physical abuse of or by any persons.

However We will advance the Insured up to \$50,000 for reasonable legal costs and expenses for any claim made against the Insured alleging molestation, the interference with, the mental abuse of or the physical abuse of any persons during the Period of Insurance which arises in the course of the Business *provided that*:

8.26.1 We may at any time refuse to advance to the Insured legal costs and expenses if in Our sole opinion We believe that the allegation will be proved; and

8.26.2 if a court of law, arbitration panel, tribunal or other judicial body determines that the allegation is proved then the Insured agrees to repay to Us the amount so advanced.

8.27 Work involving Animals

8.27.1 any person carrying out any treatment on animals where that person (or the Insured) is required to be registered under any relevant state, territory or federal legislation in respect of that treatment;

8.27.2 canines involved in racing; or

8.27.3 Bloodstock (as hereafter defined).

However paragraphs 8.27.2 and 8.27.3 above do not apply to Insureds that during the Period of Insurance are members of the International Equine Body Worker Association (IEBWA), Bowen Therapists Federation of Australia (BTFA), Small Animals and Equine Naturopathic (SAEN), Bowen Association Australia (BAA), the college operated by Smart Bowen Pty Ltd, International Institute Complementary Therapists (IICT) and the Australian College of Equine Podiotherapy (ACEP).

The term Bloodstock applies to any horse which is:

8.27.3.1 entered or eligible for entry in any stud book; or

8.27.3.2 registered with a recognised turf authority which is the authority for controlling horse or harness racing in the country concerned.

The maximum amount payable for any claim in connection with animals will not exceed a limit of indemnity of \$1,000,000 including legal costs and expenses.

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 shall remain in full force and effect.

8.28 Fitness trainers

8.28.1 dietrics, martial arts, contact boxing, wrestling, self-defence, gymnastics, ocean swimming, life guarding or swimming teaching/coaching, participation in sporting events or matches; or

8.28.2 owners/operators of fitness facilities; or

8.28.3 purchasing, selling or hiring fitness equipment and/or machinery.

8.29 Retreats and conferences

the insured conducting, operating or being responsible for a retreat or conference. Without limiting the foregoing a retreat includes having people staying overnight at the insured's own home in connection with the insured's business. However this does not exclude the insured providing services to a retreat/conference organiser or taking a class at a retreat/conference that falls within the insured's modality.

8.30 Australian Standards

We shall not provide indemnity against liability caused by or arising from any product that does not comply with Australian Standards.

8.31 Excluded Products

We shall not provide indemnity against liability caused by or arising from:

- 8.31.1 second hand mechanical & electrical goods and toys;
- 8.31.2 prescription medicines;
- 8.31.3 products that have been dispensed, or have been repackaged into smaller containers for retail sales except of natural products that are not altered in any way during the repackaging process;
- 8.31.4 any Insured providing goods that could be described as hazardous, flammable or dangerous which includes but is not limited to:
 - 8.31.4.1 products sold in containers exceeding 5 litres or 5kg;
 - 8.31.4.2 explosive tools, fireworks, flammable liquid or bulk pool chemicals;
 - 8.31.4.3 products intended to be used in connection with the navigation, safety or controls of vehicles, aircraft or watercraft;
 - 8.31.4.4 parts for motor vehicles;
 - 8.31.4.5 medical equipment;
 - 8.31.4.6 guns &/or ammunition;
 - 8.31.4.7 bicycles;
 - 8.31.4.8 model aircraft, drones;
 - 8.31.4.9 knives, swords or spears;
 - 8.31.4.10 power tools;
 - 8.31.4.11 motorised vehicles;
 - 8.31.4.12 baby or infant equipment or toys;
 - 8.31.4.13 animal feed intended for animals other than pets ; or
 - 8.31.4.14 self-balancing motorised boards and scooters.

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.

9 Claims Conditions

The following conditions apply to this insurance:

9.1 Discovery and Notice of a Claim

If during the Policy Period the Insured receives notice of any Claim or loss 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

9.2 Admission of Liability

In the event of any Claim or loss, 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.

9.3 Conduct of Claims

Following notification of any Claim or loss 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.

9.4 Claim Settlements

We may at any time pay (or agree to pay) to the Insured in connection with any Claim or loss 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 loss for an amount greater than otherwise provided for in this policy. In the event that:

- 9.4.1 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, 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.
- 9.4.2 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, 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.

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.

9.5 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 or Country in which 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 or loss which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim or loss will thereafter be limited to the amount for which the Claim or loss 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 or loss, less any unpaid Excess or the final amount of the Claim or loss including Defence Costs.

9.6 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.

9.7 Allocation

Where the Insured is entitled to indemnity pursuant to Insuring Clause 1.2, 2.2 or 6.1 Defence Costs in circumstances where a Claim or 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 the Insurer, 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 or Country in which this policy is issued.

9.8 Notification of Other Insurances in respect of Section 2 Public Liability

If at any time of any Personal Injury or Property Damage which is indemnifiable, or but for Exclusion 7.7 Other Insurance would be indemnifiable, under this policy there exists any other insurance policy which would provide indemnity to the Insured, then the Insured must provide Us with full details of any such insurance policy when making any Claim under this policy.

10 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):

10.1 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.

10.2 Terms of Payment

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

10.3 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 \$50.00 in the event of cancellation by the Insured.

10.4 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. The Insured is not to waive or release any right of recourse against any other entity without first obtaining our written consent.

10.5 Claims Aggregation

Where two (2) or more Claims or losses 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 or losses will constitute one Claim or loss under this policy; and

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

10.5.2 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).

10.6 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:

10.6.1 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;

10.6.2 any material change in the nature of the advice 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).

10.7 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 entitlement of the Insured's entitlement to the Input tax credit.

10.8 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 Us to inspect such records and shall apply such particulars as We may require within one (1) month from the expiry of the Policy Period and the Premium shall thereupon be adjusted by Us from time to time. At Our request, the Insured shall supply an auditor's certificate in support of such particulars.

10.9 Reasonable Care

The Insured shall take all reasonable care:

- 10.9.1 to prevent any event which may give rise to a claim under this policy;
- 10.9.2 to maintain the premises plant and everything used in the Business in proper repair;
- 10.9.3 in the selection and supervision of employees;
- 10.9.4 to comply with all statutory and other obligations and regulations imposed by any authority; and
- 10.9.5 to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

10.10 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:

- 10.10.1 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); and
- 10.10.2 the retroactive date applicable to such cover will be the date of acquisition or creation of the entity or subsidiary; and
- 10.10.3 the Claim or loss arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the the Business provided by the Named Insured.

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 considers appropriate.

10.11 Run off cover for Takeover and Merger

In the event of a Takeover or Merger any coverage hereunder shall apply only to Wrongful Acts committed prior to the date of such Takeover or Merger.

10.12 Severability

Where the policy names more than one Named Insured, any conduct on the part of a Named Insured whereby such Named Insured:

- 10.12.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
 - 10.12.2 made a misrepresentation to Us before this contract of insurance was entered into;
- will not prejudice the right of any other Named Insured to indemnity as may be provided by this policy, PROVIDED ALWAYS THAT:
- 10.12.3 such other Named Insured, its directors or employees are entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard will be upon the Named Insured; and
 - 10.12.4 the Named 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
 - 10.12.5 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 Named 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 Named Insured.

11 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:-

11.1 Act of Terrorism

means the actual or threatened

- 11.1.1 use of force or violence against persons or Property;
- 11.1.2 commission of an act dangerous to human life or Property;
- 11.1.3 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;
- 11.1.4 and the reasonably apparent intent or effect is to:
 - 11.1.5 intimidate or coerce a government or organisation or to disrupt any segment of the economy;
 - 11.1.6 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
 - 11.1.7 further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture;
- 11.1.8 affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

11.2 Business

means the activities provided by or on behalf of the Insured as described in the Schedule.

11.3 Aircraft

means any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space

11.4 Claim

means:

- 11.4.1 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;
- 11.4.2 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
- 11.4.3 for the purpose of Extension 6.8 "Fines and Penalties" any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty

11.5 Compensation

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

11.6 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.

11.7 Cooperate

means that the Insured:

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

- 11.7.2 will have adequate internal systems in place, which will allow ready access to material information; and
- 11.7.3 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.

11.8 Crisis Event

means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the Named Insured, the event has the potential to cause an imminent decrease of greater than 30% (thirty percent) of the total consolidated annual revenues of the Named Insured if left unmanaged:

- 11.8.1 the sudden, unexpected death or disability of any executive;
- 11.8.2 loss of a major customer, contract or credit facility;
- 11.8.3 employee workplace violence;
- 11.8.4 the first apparent unauthorised intrusion into any Named Insured's computer facilities;
- 11.8.5 a recall or boycott of any product;
- 11.8.6 a man-made disaster;
- 11.8.7 any criminal or fraud investigation.

Crisis Event does not include an event that affects the Named Insured's industry in general rather than the Named Insured specifically.

11.9 Crisis Loss

means the reasonable and necessary fees, costs and expenses paid by the Named Insured for external crisis management services provided in response to a Crisis Event within the first thirty (30) days after the event (but never beyond the expiry of the Policy Period).

11.10 Defence Costs

means all reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses incurred in the investigation, reporting on, defence or settlement of any Claim and of any appeal in respect of which We are liable to indemnify the Insured under this policy. Defence Costs includes the costs of legal representation at any Inquiry and the legal costs associated with the preparation for said Inquiry.

11.11 Documents and Data

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 paper.

11.12 Excess

means 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 Us.

The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST. If any payment made by Us shall include the amount for which the Insured or any other person entitled to indemnity is responsible such amount shall be repaid to Us forthwith.

If the Schedule states that the Excess is 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 by the Insured under this policy.

If the Schedule states that the Excess is 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.

11.13 Fine or Penalty

means

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

11.14 Indemnity Limit

means the sum shown in the Schedule which is available to indemnify the Insured.

11.15 Inquiry

means any regulatory inquiry, privacy inquiry, disciplinary proceeding or other proceedings.

11.16 Insured

means:

- 11.16.1 the Named Insured;
- 11.16.2 any person who is during or was prior to the Policy Period, a director, officer principal or partner, of the Named Insured but only in respect of work performed while a director, officer, principal or partner of the Named Insured;
- 11.16.3 any person who is during or was prior to the Policy Period, an employee of the Named Insured but only in respect of work performed while an employee of the Named Insured;
- 11.16.4 any person engaged in Healthcare Services under an apprenticeship with the Named Insured;
- 11.16.5 any person under contract of service or apprenticeship with another employer who is hired to or borrowed by the Named Insured;
- 11.16.6 any person engaged by the Named Insured under a work experience government training or similar scheme; and/or
- 11.16.7 the estate, heirs, legal representatives or assigns of any persons noted in 11.15.1 to 11.15.7 above in the event of the death, incompetence or bankruptcy of that Insured, PROVIDED ALWAYS THAT,
 - 11.16.7.1 We will only indemnify the estate, heirs, legal representatives or assignees in respect of any civil liability of the Insured to the extent that the Insured would have been covered under this policy if the Insured was alive, had capacity or was not insolvent or bankrupt; and
 - 11.16.7.2 such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply

11.17 Mechanically Propelled Vehicle

means 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.

11.18 Medical Practitioner

means a person with a doctor's qualification or higher and/or any Registered Health Practitioner as defined in law.

11.19 Named Insured

means the company, corporation, partnership or other entity named as such in the Schedule and their Subsidiaries.

11.20 Occurrence

means an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury and/or Property Damage that is neither expected nor intended from the Insured's standpoint. The effects of assault and battery committed for the purpose of preventing or eliminating danger to persons or property committed by or at the direction of the Insured shall be deemed to be Personal Injury neither expected nor intended from the Insured's standpoint. All events of a series consequent on or attributable to one source or original cause are deemed to be one Occurrence.

11.21 Personal Injury

Means:

- 11.21.1 bodily injury (including death at any time resulting therefrom), death, illness, disease, or disability;
- 11.21.2 mental injury, mental anguish or shock;
- 11.21.3 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 11.21.4 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;
- 11.21.5 racial, religious, sexual or age discrimination not committed by or at the direction of the Insured; and/or
- 11.21.6 loss of consortium resulting from any of the circumstances described in clauses a) to e) above

11.22 Policy

means the policy wording, Schedule, attached endorsements and any additional endorsements agreed to by Us in writing.

11.23 Policy Period

means the period shown in the Schedule.

11.24 Pollution or Contamination

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 and shall include solid, liquid, gaseous or thermal irritant or contaminant including (but not limited to) smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes material to be recycled, reconditioned or reclaimed.

11.25 Preceding Policy

means a medical malpractice liability insurance policy for a period of twelve (12) months immediately preceding, without interruption, the Policy Period.

11.26 Principal

means any person, employer, firm, company, ministry or authority for whom the Insured is carrying out a contract or agreement for the performance of work.

11.27 Product

means anything (after it has ceased to be in the Named Insured's possession or control) which has been designed, specified, formulated, manufactured, grown, extracted, altered, produced, processed, assembled, constructed, erected, installed, treated, serviced, altered, repaired, sold, supplied, resupplied, imported, exported, parcelled, packaged, bottled, labelled or distributed by or on behalf of the Named Insured including any packaging or container of the thing including:

11.27.1 directions, markings, labels, instructions, warnings or advice given or omitted to be given in connection with the thing; or

11.27.2 anything in respect of which the Named Insured is taken or deemed to be the manufacturer by operation of a law of Australia or New Zealand.

11.28 Property Damage

means physical damage to, destruction of or loss of tangible property including resulting loss of use of that property; or 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.

11.1 Qualified

means the successful completion of a course provided by a registered training organisation, college or teaching institution where the final outcome recognises a person as competent to practice the Business for which cover is provided.

11.2 Retroactive Date

means the date specified in the Schedule.

11.3 Schedule

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

11.4 Takeover or Merger

means any sale of the Named Insured or its merger with or acquisition by another entity such that the Named Insured is not the surviving entity, or the acquisition by any entity or person of 50% (fifty percent) or more of the voting stock of the Named Insured.

11.5 Territorial Limits

means 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 Us (with the exception of the temporary presence in the United States of America or Canada of any employee, director or partner of the Named

Insured who is normally resident in Australia and who is not performing any manual or supervisory work whatsoever whilst in the United States of America or Canada).

11.6 Tool of Trade

means 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 Healthcare Services.

11.7 Watercraft

means any vessel or craft or thing designed to float on or in or travel through water for the purpose of carrying persons or property.

11.8 We, Us, Our

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