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**Berkley Insurance Australia**

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Professional Indemnity & Public Liability Insurance Policy

(The Australian Paramedics Association (NSW) (APA NSW))

**IMPORTANT NOTICE TO THE INSURED**

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

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## **About the insurer**

This insurance is underwritten by Berkley Insurance Company trading as Berkley Insurance Australia (ABN 53 126 559 706).

Berkley Insurance Australia can be contacted as follows:

Address: Level 7, 321 Kent Street, Sydney, NSW, 2000  
Telephone: (02) 9275 8500  
Facsimile: (02) 9261 2773  
Website: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

Berkley Insurance Australia is a party to the General Insurance Code of Practice. You can view the Code at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

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

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

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

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

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

## **Non-disclosure**

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

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

## **B. Claims Made Policy**

This policy provides Professional Indemnity insurance on a "Claims Made" basis. This means that the policy covers you for Claims made against you during the period of cover. It does not provide cover for:

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

## **C. Subrogation Agreements**

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

#### **D. Average Provision**

Section 1.4 of the policy provides that if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Berkley's liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim.

#### **E. Dispute resolution / Complaints**

We view seriously any complaint made about our products or services and will deal with it promptly and fairly. Any complaints should firstly be addressed to your insurance intermediary. If you remain unsatisfied please place your complaint in writing to The Claims Manager at Berkley Insurance Australia Level 7, 321 Kent Street, Sydney, NSW, 2000, or Email to [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au).

#### **F. Privacy Statement**

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

##### **Purpose of Collection**

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

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

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

##### **Disclosure**

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

##### **Consequences if Information is not Provided**

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

##### **Access**

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

### **Important Master Policy Notices**

The Insured and the Insurer agree that the Australian Paramedics Association (NSW) (APA NSW), act as agent for their respective Eligible Members under this Policy for the purposes of accepting notices from the Insurer, the payment of premium and the varying of Policy terms.

The Limit of Indemnity shown in the Schedule is shared by all the Insured. As a result if the Limit of Indemnity and all of its reinstatements under the Automatic Extension – Automatic Reinstatement are exhausted by Claims against some of the Insured there will be no cover remaining under the Policy.

The Insurer may agree to extend the Policy to include additional Eligible Members during the Period of Insurance but this will not increase the Limit of Indemnity or provide any additional reinstatements of the Limit of Indemnity.

Please read this Policy carefully to ensure that it meets your requirements. It is written on a Claims made and notified basis, which means that, subject to the Continuous Cover clause, it will only respond to Claims first made against the Insured and notified to the Insurer during the Period of Insurance.

### **Insurance Preamble**

The Insured and the Insurer agree that the Insurer will provide insurance subject to the terms of this Policy.

#### **1.1 Insuring Clause**

The Insurer will indemnify the Insured up to the Limit of Indemnity against civil liability for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance resulting from the conduct of the Professional Services but not in respect of any such Claim or Claims resulting from any act, error or omission occurring or committed prior to the Retroactive Date.

In the event that an Eligible Member is working under a contract of employment at the time of any act, error or omission that results in a Claim then this Insuring Clause only operates if and to the extent that such Eligible Member is unable to obtain indemnity for such Claim from his or her employer and employer's insurer at the relevant time.

#### **1.2 Good Samaritans Acts**

The Insurer will indemnify the Insured up to the Limit of Indemnity against civil liability for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance resulting from Good Samaritans Acts.

The Territorial Limits for Good Samaritans Acts are extended to worldwide.

### **1.3 Limit of Indemnity**

The Limit of Indemnity for all Claims first made against the Insured and notified to the Insurer during the Period of Insurance shall not exceed the sum shown in the schedule irrespective of the number of Eligible Members insured under the Policy.

The Limit of Indemnity is shared between all of the Insured.

### **1.4 Insured Costs**

The Insurer will, in addition to the Limit of Indemnity, pay Insured Costs, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims exceeds the Limit of Indemnity, the liability of the Insurer for such Insured Costs shall be only that proportion which the Limit of Indemnity bears to the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims.

### **1.5 Excess**

The Insured is liable for the amount of any compensation, claimant's costs and expenses or Insured Costs that is collectively less than or equal to the Excess for each Claim. The Excess is deducted from compensation, claimant's costs and expenses payable before the application of the Limit of Indemnity.

The Insured is liable for the amount of any Inquiry Costs that is less than or equal to the Excess for each notice. The Excess is deducted from Inquiry Costs payable before the application of the aggregate limit stated in paragraph 5 of the Inquiry Costs Automatic Extension.

The Insurer has no liability for the amount of compensation, claimant's costs and expenses, Insured Costs or Inquiry Costs that is less than or equal to the Excess for each Claim or notice regarding Inquiry Costs.

The Insured agrees that the Excess must be retained by the Insured and is to remain uninsured.

### **1.6 Aggregation of Claims**

All Claims arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single Claim and shall attract one Excess.

For the purposes of the Inquiry Costs Automatic Extension, all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single notice and shall attract one Excess.

## **Insurance Clarification**

For the purposes of clarifying the scope of cover under the Insuring Clause of this Policy, the Insuring Clause includes civil liability for:

### **2.1 Libel or Slander**

Libel or Slander, provided that:

- 2.1.1 the libel or slander is committed by the Insured in the course of carrying on their Professional Services; and
- 2.1.2 the Insured did not intend to publish the libel or commit the slander with express malice.

### **2.2 Competition and Consumer Act 2010 ("Australian Consumer Law")**

Claims made under Australian Consumer Law, provided that the Insurer will not indemnify the Insured for Claims made where such Claims arise:

- 2.2.1 under the penal or criminal provisions of that law or
- 2.2.2 from conduct of the Insured which is fraudulent or intended to mislead or deceive.

However the Insurer will only exclude such Claims where it is established by final adjudication that the Insured breached the penal or criminal provisions of that law, or where the conduct was established by final adjudication to be fraudulent or intended to mislead or deceive.

For the purpose of this clause, Australian Consumer Law includes the previous consumer laws found in the Trade Practices Act 1974 (Cth) and State and Territory Fair Trading legislation.

### **2.3 Contractual Liability**

Contractual liability, provided that:

- 2.3.1 the Insurer will not be liable to indemnify any liability assumed by the Insured under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the Insured in the absence of such agreement.
- 2.3.2 where a Claim results from a breach of contract or is an alleged breach of contract the Insurer will not reduce any indemnity payable by the mere fact that contributory negligence is not available as a defence.

### **2.4 Intellectual Property**

Infringement of rights of intellectual property, provided that the act, error or omission by the Insured is unintentional and is committed in the course of carrying on the Professional Services.

## **2.5 Sub-contractors and Consultants**

Acts, errors or omissions of sub-contractors and consultants, provided that the Insurer will only indemnify the Insured for its civil liability in connection with the Professional Services provided by the subcontractor and/or consultant. Indemnity will not extend to the sub-contractor and/or consultant who committed the act, error or omission.

## **2.6 Voluntary Services**

The cover provided by this policy shall extend to any Claim up to the Indemnity Limit first made against the eligible member during the Policy Period in respect of the eligible members civil liability for compensation arising from Professional Services voluntarily administered.

### **Automatic Extensions**

These Automatic Extensions are subject to all the terms of the Policy, unless otherwise stated. The total of all payments made under the Automatic Extensions will be part of and not in addition to the Limit of Indemnity, unless otherwise stated.

#### **3.1 Additional Eligible Members**

The Insurer agrees to extend the Policy to include additional Eligible Members during the Period of Insurance.

This does not increase the Limit of Indemnity or provide any additional reinstatements of the Limit of Indemnity.

The Insurer does not need to obtain the consent of the Australian Paramedics Association (NSW) (APA NSW) prior to agreeing to extend the Policy to include new Eligible Members during the Period of Insurance.

#### **3.2 Automatic Reinstatement**

The Insurer agrees, in the event of exhaustion (or partial exhaustion) of the Limit of Indemnity solely by reason of indemnity for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance, to reinstate (or partially reinstate in the case of partial exhaustion) the Limit of Indemnity in respect of compensation and claimant's costs and expenses.

Provided that:

- 3.2.1 the Insurer's liability for any single Claim will not exceed the Limit of Indemnity; and
- 3.2.2 the aggregate liability of the Insurer under this Policy will not exceed the sum of the Limit of Indemnity and, in the event of exhaustion, partial exhaustion or partial reinstatement of the Limit of Indemnity, three reinstatements of the Limit of Indemnity, save that the Insurer will in addition pay Insured Costs on the basis already set out in this Policy.

#### **3.3 Breach of Privacy and Confidentiality**

The Insurer will indemnify the Insured for any Claim as a result of a breach or an alleged breach of privacy or confidentiality solely in the conduct of Professional Services provided by the Insured.

#### **3.4 Continuous Cover**

Where the Insured:

- 3.4.1 first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and

3.4.2 had not notified the Insurer of such facts or circumstances prior to the Period of Insurance, then the Prior Claims or Known Circumstances exclusion will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that:

- (a) there is an absence of fraudulent non-compliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances; and
- (b) the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under a professional indemnity policy issued by the Insurer and was insured by the Insurer at the time when the Insured first became aware of such facts or circumstances; and
- (c) the Insurer may reduce its liability under the Policy to the extent of any prejudice the Insurer may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance.

### **3.5 Dishonesty of Employees**

The Insurers will, notwithstanding the Dishonest, Fraudulent or Criminal Acts Exclusion, indemnify the Insured against civil liability for compensation and claimants costs and expenses in respect of any Claim first made against the Insured and notified to the Insurer during the Period of Insurance resulting from any dishonesty, fraudulent, criminal or malicious act or omission by any Employee occurring or committed in the provision of Professional Services.

The Insurer will in addition pay Insured Costs on the basis already set out in this Policy.

Provided that nothing in this Automatic Extension shall require the Insurers to indemnify any Employee who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who by act of omission has condoned any such act of omission.

### **3.6 Inquiry Costs**

The Insurer may, if it considers it reasonable to do so, indemnify the Insured for Inquiry Costs. Provided that:

- 3.6.1 the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured and notified to the Insurer during the Period of Insurance; and
- 3.6.2 such attendance arises directly from conduct allegedly committed by the Insured in carrying on their Professional Services; and
- 3.6.3 such indemnity is subject to the written consent of the Insurer prior to the incurring of the Inquiry Costs; and
- 3.6.4 regular or overtime wages, salaries or fees of the Insured are excluded from this indemnity; and
- 3.6.5 the aggregate indemnity payable for all claims under this clause shall not exceed \$500,000 during the Period of Insurance.

### **3.7 Intoxicants & drugs**

Notwithstanding General Exclusion “Intoxicants & drugs”, the Insurer will indemnify the Insured for Inquiry Costs in respect of any Claim or inquiry (including with respect to a coronial inquiry) arising from any alleged rendering of Professional Services by the Insured whilst under the influence of intoxicants or drugs, and/or arising from any alleged failure to render Professional Services because of such influence.

Provided that nothing in this Automatic Extension shall require the Insurer to indemnify any Insured who has admitted, or has been found by judgement or adjudication, to having rendered Professional Services under the influence of intoxicants or drugs (or having failed to render Professional Services because of such influence). However, the Insured will not be required to reimburse the Insurer for any Inquiry Costs paid under this clause up until that time.

### **3.8 Loss of Documents**

The Insurer will, in the event of loss of or damage to Documents occurring in connection with the conduct of Professional Services, indemnify the Insured against all costs and expenses reasonably incurred by the Insured in replacing or restoring such Documents.

Provided that:

- 3.8.1 such loss or damage is sustained during the Period of Insurance while the Documents are either in transit or in the custody of the Insured or of any person to whom the Insured has entrusted them in the course of the normal conduct of the Professional Services; and
- 3.8.2 the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the Insurer with the consent of the Insured or if such consent is withheld, by the President of the Law Society or Institute of whatever State where the Policy was issued;
- 3.8.3 the Insurer shall not be liable in respect of loss or damage caused by riot or civil commotion; and
- 3.8.4 any Document kept in digital, magnetic or electronic form is duplicated each day and the duplicate is stored at another secure location, with the intent that the duplicate document can be used for restoring any lost or damaged Document.

### **3.9 Molestation Defence Costs**

Notwithstanding exclusion 9.6 Dishonest, Fraudulent or Criminal Act, the Insurer will indemnify the Insured for reasonable legal costs and expenses incurred in defending a civil Claim for any actual or alleged molestation or, interference with, mental abuse of or physical abuse of persons by an Insured.

The maximum aggregate amount payable under this extension is \$50,000 which forms part of and is not in addition to the Indemnity Limit available under this policy.

This Policy will not provide indemnity for any criminal act or omission. Nothing in this extension shall require the Insurer to indemnify any Insured who has perpetrated any such act of molestation, interference, mental abuse or physical abuse or any Insured who by act or omission has condoned any such act. The Insurer may at any time refuse to advance to the Insured legal costs and expenses if in the Insurer's sole opinion it believes that the allegation will be proved and if it is found by way of any admission by the Insured, judgment or adjudication that such Insured did in fact commit or condone such molestation, interference, mental or physical abuse then any Insured Costs under this extension must be repaid by such Insured within thirty days following a request by the Insurer for such repayment.

### **3.10 Run-Off Cover**

In the event that during the Period of Cover you:

- a) permanently retire from the provision of the professional Services;
- b) permanently cease to provide the Professional Services; or
- c) are subject to a merger, takeover, sale winding-up or other permanent cessation of the Professional Services;

We will make available to the Insured an extension to the Period of Insurance for a period of up to an additional three (3) months

#### **Provided that:**

- i. such claim arises out of any act, error, omission or conduct which occurred prior to the date of the happening of any of the matter listed in a) to c) above but on or after the Retroactive Date; and
- ii. We were your professional indemnity insurer at the time the act, error, omission or conduct forming the subject of the claim occurred:

#### **Provided further that:**

All cover under this additional benefit shall cease if:

- iii. You cease retirement;
- iv. You resume your conduct of any of the Professional Services;
- v. You are no longer subject to a merger, takeover, sales or winding-up or other permanent cessation of the Professional Services; or
- vi. Another policy of insurance is arranged to insure any liability arising from the retirement, permanent cessation of the Professional Services, merger, takeover, sale or winding-up.

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

**Public & Products Liability Extension (Claims Made Basis)**

**Definitions**

In this endorsement:

**4.1 The Business** shall mean Professional Services and shall also include

- 4.1.1 the ownership or occupation of, the carrying out of repairs maintenance alterations or additions to, or the demolition of, the Insured's premises to which this Policy applies.
- 4.1.2 the deeming of the Insured to be a manufacturer of Products by operation of a law of Australia or its external territories.

**4.2 Employee(s)** shall mean any person engaged by any of the Insured under a contract of service or apprenticeship solely in the conduct of Professional Services provided by the Insured.

**4.3 Territorial Limits** shall mean anywhere within Australia including its external territories.

**4.4 Occurrence** shall mean an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or P r o p e r t y Damage neither expected nor intended by any of the Insured.

**4.5 Personal Injury** shall mean

- 4.5.1 bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them;
- 4.5.2 the effects of
  - (a) false arrest, false imprisonment, wrongful eviction, wrongful detention and humiliation; and/ or
  - (b) assault and battery not committed by or at the direction of any of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

**4.6 Property Damage** shall mean

- 4.6.1 physical damage to or loss or destruction of tangible property including resultant loss of use; and / or
- 4.6.2 loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an Occurrence.

**4.7 Property** in The term "Property in the possession or control of any of the Insured" does not include:

- 4.7.1 (a) personal possessions of directors, partners, Employees or visitors; or  
(b) premises (and their contents) not owned or rented by any of the Insured but which are temporarily occupied by any of the Insured for the purpose of carrying out work in connection with the Business; or
- 4.7.2 premises (including fixtures and fittings) leased or rented to any of the Insured provided that the Insured shall be responsible for the first \$100 in respect of loss or damage caused other than by fire or explosion in addition to any Excess specified in the Schedule; or
- 4.7.3 Vehicles, not owned by the Insured nor used in connection with the Business, whilst within a free car park provided by the Insured for the use of customers visitors or Employees; or
- 4.7.4 the first \$100,000 of each Occurrence which results in physical damage to or destruction of tangible property (not being property referred to in items 4.7.1. (a) & (b), 4.7.2 or 4.7.3 of this Definition) in the possession or control of any of the Insured in connection with the Business.

**4.8 Products** shall mean anything manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed (including any packaging or container) in or from Australia or its external territories by any of the Insured in the course of the Business (but only after it has ceased to be in the possession or control of any of the Insured), and also includes:

- 4.8.1 the design formula or specification of such Products, and
- 4.8.2 directions markings, instructions, warnings or advice given or omitted to be given in connection with such Products, and
- 4.8.3 anything in respect of which the Insured is taken or deemed to be the manufacturer by operation of a law of Australia or its external territories.

**4.9 Vehicle** shall mean any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

## **5.1 Section A –Public Liability Extension**

The Insurer will indemnify the Insured against liability at law for compensation and claimant's costs and expenses of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance for:

5.1.1 Personal Injury

5.1.2 Property Damage OTHER THAN

(a) Property belonging to any of the Insured

(b) Property in the possession or control of any of the Insured

happening within the Territorial Limits as a result of an Occurrence and in connection with the Business less the amount of the Excess shown in the Schedule as applicable to Section A of this endorsement.

In the event that an Insured is providing voluntary services or working under a contract of employment at the time of any act, error or omission that results in a Claim then this Insuring Clause only operates if and to the extent that such Insured is unable to obtain indemnity for such Claim from parties for which voluntary services are provided or his or her employer and employer's insurer at the relevant time.

For the purposes of Section A of this Extension, the "Insured" is extended to include any landlord of an Insured in respect of the liability of such landlord arising out of the performance by the Insured of any contract or agreement for the carrying out of work or services in connection with the Business, but only to the extent required by such contract or agreement.

However, for the purposes of Section A – Public Liability Extension the Limit of Indemnity for an Insured who is also a trainee student is \$20,000,000 in the aggregate including Insured Costs. Further, the Automatic Reinstatement clause does not apply to the Limit of Indemnity available under this Extension to an Insured who is also a trainee student.

The Limit of Indemnity is shared between all of the Insureds.

## 5.2 Specific Exclusions applicable to Section A

The following specific exclusions are in addition to the General Exclusions of this Policy.

The Insurer shall not be liable under Section A of this extension for:

- 5.2.1 liability assumed solely under an agreement unless such liability would have attached in the absence of such agreement or is specifically allowed by the Insurer's written endorsement, or relates to a liability assumed by any of the Insured (other than a principal) under a lease for the premises referred to in Definition 1.1.
- 5.2.2 the cost of performing, completing, correcting or improving any work done or undertaken by any of the Insured.
- 5.2.3 Personal Injury or Property Damage caused by or in connection with the operation ownership possession or use by or on behalf of any of the Insured of any vessel or craft made or intended to be water borne or air borne, (other than a watercraft or water vessel not exceeding 8 metres in length or a hand propelled boat or pontoon).
- 5.2.4 Personal Injury or Property Damage caused by or in connection with the operation, ownership, possession or use by the Insured of any vehicle which is registered or required to be insured under any law which applies to its use (hereinafter referred to as Statutory Insurance).  
  
However, this specific exclusion will not apply to Personal Injury or Property Damage which arises out of:
  - (a) the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare; or
  - (b) the loading or unloading of or the delivery or collection of goods to or from any Vehicle used in work undertaken by or on behalf of any of the Insured, but which is not in the physical or legal control of such Insured; or
  - (c) the use of any Vehicle as a tool of trade,provided that such liability did not arise in circumstances for which indemnity should be provided under any form of Statutory Insurance whether such insurance was effected or not.
- 5.2.5 Personal Injury or Property Damage caused by Products other than Personal Injury or Property Damage caused by food or beverages sold or supplied by any of the Insured as a service to Employees or visitors for consumption on the premises of such Insured.
- 5.2.6 Claims arising out of any breach of a duty owed in a professional capacity by any of the Insured.

## **6.1 Section B - Products Liability Extension**

The Insurer will indemnify the Insured against liability at law for compensation and claimant's costs and expenses of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance for

- 6.1.1 Personal Injury
- 6.1.2 Property Damage OTHER THAN to:
  - (a) Property belonging to any of the Insured
  - (b) Property in the possession or control of any of the Insured

happening within the Territorial Limits as a result of an Occurrence and in connection with the Business and caused by Products less the amount of the Excess shown in the Schedule.

## **6.2 Specific Exclusions applicable to Section B**

The following Specific Exclusions are in addition to the General Exclusions of this Policy.

The Insurer shall not be liable under Section B of this extension for:

- 6.2.1 Personal Injury or Property Damage caused by or arising out of Products intended specifically for, and installed in or on, an aircraft or other aerial device, or caused by or arising out of Products which any of the Insured knew would be so installed, where such Products are essential to the operation or navigation of an aircraft or other aerial device.
- 6.2.2 liability assumed solely under an agreement unless such liability:
  - (a) would have attached in the absence of such agreement, or
  - (b) is specifically allowed by the Insurer's written endorsement, or
  - (c) is assumed by any of the Insured under a warranty of fitness or quality, or is implied by law, in respect of Products.
- 6.2.3 the cost of recalling withdrawing replacing or repairing Products or of making any refund on the price paid for Products, provided that this specific exclusion 3 does not apply to liability for physical damage to or destruction of Products caused by other Products if they were physically independent at the time of such physical damage or destruction.
- 6.2.4 Personal Injury or Property Damage:
  - (a) happening in any country on the continent of North America, or in states or territories incorporated in or administered from or by such country, and / or
  - (b) caused by Products exported by any of the Insured to any such country.
- 6.2.5 any Claim indemnifiable under Section A of this Extension.

## **7.1 Exclusions applicable to Sections A and B of this Extension**

The following Exclusions apply to Sections A and B of this Extension and are in addition to the General Exclusions of this Policy.

The Insurer shall not be liable for:

- 7.1.1 (a) Personal Injury or Property Damage caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) unless such discharge, dispersal, release or escape:
- (i) is neither reasonably expected nor intended by any of the Insured; and,
  - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time.
- (b) any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time and results in Personal Injury or Property Damage neither of which is otherwise excluded by this endorsement.

Provided that the total aggregate liability of the Insurer during any one Period of Insurance, in respect of all Claims arising from such Personal Injury or Property Damage or for such costs or expenses, shall not exceed the Limit of Indemnity stated in the Schedule beside the heading "Pollution".

- 7.1.2 Claims in respect of the loss of use of tangible property which has not been physically damaged or destroyed resulting from:
- (a) a delay in or lack of performance by or on behalf of any of the Insured of any contract or agreement, or
  - (b) the failure of Products or work performed by or on behalf of any of the Insured to meet the level of performance quality fitness or durability warranted or represented by any of the Insured, but this exclusion 2 (b) does 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 any of the Insured after such Products or work have been put to their intended use by any person or organisation other than Insured.
- 7.1.3 any amount by way of aggravated damages or in respect of liquidated damages, or incurred under a penalty clause, or in respect of infringement of copyright or patent.
- 7.1.4 Claims arising out of the publication or utterance of a libel or slander or defamation of character.
- 7.1.5 Personal Injury to any Employee arising out of or in the course of his/her employment.
- 7.1.6 liability imposed by the provisions of any Workers' or Workmen's Compensation legislation or any Accident Compensation legislation or any industrial award or agreement or determination.

## **8.1 Conditions applicable to sections A and B of this Extension**

The following conditions apply to section A and B of this extension and are in addition to the General Conditions of this Policy.

#### 8.1.1 Reasonable care

The Insured must:

- 8.1.1.1 take all reasonable precautions to prevent Personal Injury and/or Property Damage occurring and to prevent the manufacture, sale or supply of defective Products;
- 8.1.1.2 ensure that only competent Employees are employed;
- 8.1.1.3 comply with all statutory obligations and regulations imposed by any authority
- 8.1.1.4 maintain all premises, fittings, plant and equipment in sound condition; and
- 8.1.1.5 at its own expense, act immediately to trace, recall or modify all Products that it knows or has reason to suspect are defective or deficient.

#### 8.1.2 Alteration to risk

The Insured must notify the Insurer within 30 days of any material change to the nature of the Business of the Insured or any act of insolvency or bankruptcy of the Insured, including an inability to pay debts as and when they fall due.

### **9.1 Automatic Extensions applicable to Sections A and B of this Extension**

#### 9.1.1 Run-Off Cover

In the event that during the Period of Cover you:

- a) permanently retire from the provision of the professional Services;
- b) permanently cease to provide the Professional Services; or
- c) are subject to a merger, takeover, sale winding-up or other permanent cessation of the Professional Services;

We will make available to the Insured an extension to the Period of Insurance for a period of up to an additional three (3) months

#### **Provided that:**

- i. such claim arises out of any act, error, omission or conduct which occurred prior to the date of the happening of any of the matter listed in a) to c) above but on or after the Retroactive Date; and
- ii. We were your professional indemnity insurer at the time the act, error, omission or conduct forming the subject of the claim occurred:

#### **Provided further that:**

All cover under this additional benefit shall cease if:

- iii. You cease retirement;
- iv. You resume your conduct of any of the Professional Services;

- v. You are no longer subject to a merger, takeover, sales or winding-up or other permanent cessation of the Professional Services; or
- vi. Another policy of insurance is arranged to insure any liability arising from the retirement, permanent cessation of the Professional Services, merger, takeover, sale or winding-up.

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

## **General Exclusions**

The Insurer shall not be liable in respect of any Professional Services, Claim, liability, compensation, Inquiry Costs, claimant's costs and expenses or Insured Costs arising directly or indirectly out of or in any way involving:-

### **10.1 Asbestos**

asbestos, asbestos fibres or derivatives of asbestos.

### **10.2 Assumption of Liability**

any liability which is assumed by the Insured outside the conduct of Professional Services.

### **10.3 Controlling or Financial Interests**

any work undertaken for or on behalf of any company related to any Insured which for the purposes of this Policy includes:

10.3.1 any other Insured; or

10.3.2 any subsidiary of an Insured; or

10.3.3 any company of which an Insured has or has held at least a 20% financial interest and has had or has board representation on that company.

### **10.4 Directors and Officers Liability**

the Insured's functions and duties as a director and/or officer of the Insured or any legal entity, corporation or other incorporated body.

### **10.5 Dishonest, Fraudulent or Criminal Acts**

any dishonest, fraudulent, criminal or malicious act or omission by the Insured.

### **10.6 Employer's Liability**

10.6.1 the death, bodily injury, disease or illness of any Insured arising out of or in the course of or in respect of his/her employment; or

10.6.2 a breach of any obligation owed by an Insured to an Insured.

### **10.7 Fines, Penalties, Punitive or Aggravated Damages**

any fines or penalties including civil penalties, punitive or aggravated damages.

### **10.8 Intoxicants & Drugs**

in respect of services rendered by any person whilst under the influence of intoxicants or drugs or failure to render services because of such influence.

### **10.9 Liquidated Damages**

any liquidated damages imposed upon the Insured by contract or agreement, except to the extent that the Insured would have been liable for that damage in the absence of any such contract or agreement.

### **10.10 Maternity and Obstetric**

10.10.1 the provision of any form of midwifery services by midwives who are in independent practice, self employed or not working under a contract of employment.

For the purposes of this exclusion, "midwifery services" includes:

- a) the provision of care and advice during the period commencing six weeks prior to labour and ending six weeks after labour; and
- b) the provision of care, supervision, treatment, support, facilitation, assistance and advice during labour and birth.

10.10.2 the provision of any form of lactation consultancy services by lactation consultants who are in independent practice, self employed or not working under a contract of employment (but this exclusion will only operate if, and only to the extent that, those services were provided when present at the delivery).

### **10.11 Osteopathy, chiropractic and manipulative therapy**

chiropractic, osteopathic or manipulative therapy.

### **10.12 Prior Claims or Known Circumstances**

10.12.1 any Claim:

- (a) first made against the Insured prior to the inception of the Period of Insurance; or
- (b) first made against the Insured prior to the Insured becoming an Eligible Member.

10.12.2 any inquiry Costs in respect of the Insured's attendance at the inquiry or hearing if the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured:

- (a) prior to the inception of the Period of Insurance; or
- (b) prior to the Insured becoming an Eligible Member.

10.12.3 any facts or circumstances which were:

- (a) known to the Insured prior to the inception of the Period of Insurance and which might give rise to a Claim or Inquiry Costs; or

- (b) notified under any insurance that was in force prior to the inception of the Period of Insurance; or
- (c) known to the Insured prior to the Insured becoming an Eligible Member and which might give rise to a Claim or Inquiry Costs.

### **10.13 Radioactivity**

any ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

### **10.14 Subrogation Waiver**

any liability which is incurred or affected by reason of the Insured at any time entering into a deed or agreement excluding, limiting or delaying the Insured's legal rights of recovery against another.

### **10.15 Termination of Pregnancies**

the performance of any termination of pregnancy unless carried out in accordance with the relevant State or Federal legislation governing termination of pregnancies.

### **10.16 Terrorism**

9.16.1 any Act of Terrorism; or

9.16.2 any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

### **10.17 Trading Debts**

any trading debt incurred, or any guarantee in respect of such debt given, by the Insured.

### **10.18 War**

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

### **10.19 Infection of the Human Immunodeficiency Virus (HIV)**

any disease, disorder, breakdown, condition, syndrome, malfunction or dysfunction of the blood hepatic or lymphatic systems of the human body caused directly or indirectly by, or associated with, Human Immunodeficiency Virus (HIV), Lymphadenopathy Associated Virus (LAV)(including any mutants derivatives or variations of either), or in any way related to Acquired Immune Deficiency Syndrome(AIDS), or any syndrome or condition of a similar kind however named

Provided that the Insurer will indemnify the Insured against liability at law for compensation and claimants costs and expenses and other costs on the basis already set out in this Policy in respect of such Claim or Claims first

made against the Insured and notified to the Company during the Period of Insurance up to a maximum of \$2,000,000 for all such Claim or Claims during the Period of Insurance.

#### **10.20 Medical Practitioners**

any activities of a medical practitioner, whether or not they are properly licensed to carry out such activities as a medical practitioner under a State or Territory law that provides for the registration of medical practitioners, including but not limited to medical consultation, diagnosis, treatment, diagnostic testing, medical advice, prescribing or supplying medication or a breach of any State or Federal health or medical laws or regulations in force in Australia or its external territories.

For the purposes of this Exception, "medical practitioner" includes but is not limited to anaesthesia registrars, dental officers, dental specialists, medics, medical officers, senior dental officers and visiting medical officers.

#### **10.21 Sterilised Instruments**

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.

## **Claims Conditions**

### **11.1 Claims Notifications**

Every Claim made against the Insured shall be notified to the Insurer as soon as practicable and in any event prior to expiry of the Period of Insurance, and every letter, demand writ summons and legal process pertaining to such Claim shall be forwarded to the Insurer as soon as practicable after receipt.

All Claim notifications to the Insurer must be sent to:

National Head of Claims  
Berkley Insurance Australia  
PO Box Q296  
QVB NSW 1230  
Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)

It is the Insured's responsibility to ensure that such notification has been forwarded to and has been received by The Claims Manager at Berkley Insurance Australia.

### **11.2 No Admission of Liability**

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

### **11.3 Claims Conduct**

The Insurer shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.

### **11.4 Claims Settlement**

Should the Insured object to a proposal by the Insurer to settle or compromise any Claim and wish to contest or litigate the matter, then the Insured may so elect, provided that the Insurer's liability in respect of any such Claim so contested or litigated shall not exceed the amount for which, but for such election, it could have been settled or compromised by the Insurer, together with costs and expenses payable in accordance with the terms of this Policy and incurred up to the time of such election, but subject always to the Excess and to the Limit of Indemnity.

### **11.5 Assisting with Claims**

The Insured shall give all such assistance as the Insurer may reasonably require but none of them shall be required to contest any legal proceedings if it objects to doing so unless a Senior Counsel or a person of similar authority (appointed by mutual agreement between the Insured and the Insurer and paid for by the Insurer) shall advise such proceedings could be contested to the extent that there is a reasonable probability of success.

## **General Conditions**

### **12.1 Other Insurance**

If at the time any Claim arises under this Policy there is any other insurance in force covering the same liability the Insured shall promptly notify to the Insurer full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the Insurer may reasonably require.

### **12.2 Cancellation**

The Insured may not cancel this Policy.

The Insurer may cancel this Policy in accordance with the Insurance Contracts Act 1984 by giving notice in writing to the Australian Paramedics Association (NSW) (APA NSW) and Arthur J Gallagher of the date from which such cancellation is to take effect.

### **12.3 Governing Law**

This Policy will be governed in accordance with the laws of Australia. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

### **12.4 Severability and Non Imputation**

Where this Policy insures more than one party, any failure on the part of any of the parties to:

12.4.1 comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or

12.4.2 comply with any obligation in terms of this Policy; or

12.4.3 refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity in terms of this Policy, provided that such remaining party or parties shall:

(a) be entirely innocent of and have had no prior knowledge of any such failure; and

(b) as soon as practicable after becoming aware of any such failure, advise the Insurer in writing of all its relevant circumstances.

### **12.5 Payment of Premium**

All premiums must be paid to the Insurer by the Due Date for all respective Eligible Members. The Due Date is on or before thirty after the inception date of the Period of Insurance specified in the Schedule or such other time that the Insurer agrees in writing.

If the Insured fails to pay the premium by the Due Date, the Insurer is entitled to cancel this Policy in

accordance with the Insurance Contracts Act 1984.

## **12.6 Territorial and Jurisdictional Limits of Cover**

This Policy provides cover for:

12.6.1 any civil liability resulting from the conduct of the Professional Services anywhere in the world, except for any civil liability resulting from:

- (a) the conduct of the Professional Services within USA or Canada; or
- (b) the provision of professional services to persons in USA or Canada as part of the conduct of the Professional Services; or
- (c) any act, error or omission occurring within USA or Canada.

and

12.6.2 Claims made anywhere in the world, except for those Claims:

- (a) brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the Insured in USA or Canada; or
- (b) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in USA or Canada.

## **12.7 Goods and Services Tax**

As part of the premium, the Insurer will charge the Insured an amount on account of GST.

The Insured must inform the Insurer of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a Claim under this Policy. No payment will be made to the Insured for any GST liability that it may incur on the settlement of a Claim if it does not inform the Insurer of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this Policy, the Insurer's liability to the Insured will be calculated taking into account any input tax credit to which the Insured is entitled for any acquisition which is relevant to the Claim, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

## **Definitions**

For the purpose of this Policy:

### **13.1 Act of Terrorism**

shall mean any act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

### **13.2 Claim**

shall mean any demand made by a third party upon the Insured for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process.

### **13.3 Documents**

shall mean deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, and/or any other documents whether they are printed, written, or digitally, magnetically or electronically stored data (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which are the property of the Insured or for which the Insured is responsible.

### **13.4 Employee(s)**

shall mean any person engaged by any of the Insured under a contract of service or apprenticeship solely in the conduct of Professional Services provided by the Insured.

### **13.5 Excess**

shall mean that amount shown in the Schedule and represents the first amount that is payable by each Insured in respect of any compensation, claimant's costs and expenses or Insured Costs arising out of or in respect of any one Claim made against the Insured or in respect of any Inquiry Costs arising out of any one notice.

### **13.6 Good Samaritans Act**

shall mean any first aid or emergency medical assistance provided by the Insured who is present at any emergency by chance or in response to any call for emergency assistance, but excluding any assistance provided for any valuable consideration unless that consideration forms part of the income of the Insured that has been declared to Insurers. This definition is extended to include a failure to render such aid or assistance.

### **13.7 Inquiring Body**

shall mean a court, tribunal or legally constituted industry or professional board.

### **13.8 Inquiry Costs**

shall mean necessary and reasonable legal costs and expenses incurred by the Insured arising out of any notice requiring the Insured's attendance at an inquiry or hearing held before an Inquiring Body, including any Tribunal of the Insured professional body or regulator.

### **13.9 Insured**

shall mean **Eligible Member** and for the purpose of this Policy, "Eligible Member" means any person who, during the Period of Insurance, is:

13.9.1 (a) a Financial Member of the Australian Paramedics Association (NSW) (APA NSW) subject to sub-clause below.

13.9.2 For the purpose of this definition "Financial Member" means:

- (a) persons who have paid an annual membership subscription, if payment is received within three months of its Due Date; or
- (b) persons who pay membership subscription by instalment in respect of a period of membership of less than one year, if payment is received within one month of its Due Date; or
- (c) persons who pay membership subscriptions by payroll deduction, whilst the relevant authority to make payroll deductions remains in force; or
- (d) persons who pay membership subscriptions after the expiration of the periods noted in 2 A and 2 B above, but such persons are only deemed to be financial members from the date their membership subscription is received by the Australian Paramedics Association (NSW) (APA NSW); or
- (e) any non-practising member insured for the purpose of maintaining run-off cover.

13.9.3 The following members of the Australian Paramedics Association (NSW) (APA NSW) are deemed not to be "Financial Members" for the purpose of the Policy and are not Eligible Members:

- (a) any non-practising member, with the exception of 13.9.2 E; or
- (b) any member who has written to the Australian Paramedics Association (NSW) (APA NSW) requesting an exemption and who has been granted an exemption by the authorised

officer of either the Australian Paramedics Association (NSW) (APA NSW) from being an Eligible Member; or

(c) any corporation; or

(d) any member who is a qualified medical practitioner pursuant to the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.

Insured also includes the estate, heirs, legal representatives or legal assigns of any natural person insured under this Policy in the event of the death or legal incapacity of such person.

### **13.10 Insured Costs**

shall mean all necessary and reasonable costs and expenses incurred by the Insurer, or by the Insured with the Insurer's prior written consent, in defending, investigating or settling any Claim or Claims (not being Inquiry Costs or claimant's costs and expenses).

### **13.11 Insurer**

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

### **13.12 Limit of Indemnity**

shall mean the Limit of Indemnity as shown in the Schedule.

### **13.13 USA / Canada**

shall mean the United States of America and Canada and in each case its territories and protectorates.

### **13.14 Period of Insurance**

shall mean the Period of Insurance as shown in the Schedule.

### **13.15 Policy**

shall mean the Schedule, the terms of this policy and any endorsements.

### **13.16 Principal**

shall mean a sole practitioner, a partner or a firm or a director of a company.

### **13.17 Professional Services**

shall mean the professional business described in the Schedule, and no other, of the Eligible Members.

### **13.18 Retroactive Date**

shall mean the Retroactive Date shown in the Schedule.

**13.19 Schedule**

shall mean the current Schedule issued by the Insurer to the Insured.