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**W.R. Berkley Insurance (Europe), Limited**

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**MEDICAL PROFESSIONAL LIABILITY INSURANCE**

**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. Your attention is particularly drawn to the notice that appears overleaf.

Registered office: 2<sup>ND</sup> Floor, 40 Lime Street, London, EC3M 7AW  
Registered in England & Wales 4681277

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## NOTICE TO THE INSURED

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or you wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or other intermediary who arranged this insurance for you.

Alternatively you may contact ourselves at the following address:

Compliance Officer,  
W.R. Berkley Insurance (Europe), Limited  
2nd<sup>h</sup> Floor  
40 Lime Street  
London  
EC3M 7AW

If you are not satisfied with the way a complaint has been dealt with you have the right to request that the Financial Ombudsman Service (“FOS”) review your case. Their address is:

Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR  
Telephone: 0845 080 1800  
[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

There are, however, some circumstances in which the FOS is not empowered to consider complaints.

If you contact the FOS in respect of any complaints, this will not affect any rights you have in law.

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**MEDICAL PROFESSIONAL LIABILITY  
INSURANCE**

**POLICY**

**THIS IS A CLAIMS MADE  
AND CIRCUMSTANCE NOTIFIED  
INSURANCE**

The INSURED having made a written declaration to INSURERS bearing the date shown in the SCHEDULE containing particulars and statements which it is hereby agreed are the basis of this insurance and are to be considered as incorporated herein, and in consideration of the INSURED having agreed to pay the full premium shown in the SCHEDULE, INSURERS agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this insurance.

**1.1 Insuring Clause**

INSURERS shall indemnify the INSURED, up to the INDEMNITY LIMIT, for the amount of any claim (including claimant's costs and expenses) first made against the INSURED and notified to INSURERS during the POLICY PERIOD in respect of any LEGAL LIABILITY incurred by the INSURED in the course of professional services undertaken by the INSURED to a patient or patients in the exercise and conduct of the INSURED'S BUSINESS, arising out of:-

- (i) a breach of a professional duty consequent upon any negligent act, negligent error or negligent omission causing INJURY;
- (ii) the provision of GOOD SAMARTIANS ACTS

**1.2 DEFENCE COSTS**

INSURERS shall also indemnify the INSURED within the INDEMNITY LIMIT against DEFENCE COSTS, subject to any EXCESS, where such

costs have been incurred with INSURERS' prior written consent for:-

- (i) the defence, handling or settlement of any claim or CIRCUMSTANCE covered under Insuring Clause 1.1;
- (ii) any Coroners Inquest arising out of the death of a patient of the INSURED;
- (iii) proceedings in any Court arising out of alleged breach of statutory duty resulting in any claim or CIRCUMSTANCE covered under Insuring Clause 1.1.

**EXTENSIONS**

The following extensions are granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance:-

- 2. NONE**

## **CLAIMS CONDITIONS**

The following claims conditions apply to this insurance:-

### **3.1 Conditions Precedent to Liability**

All conditions set out below (3.2 – 3.5 inclusive) are deemed to be conditions precedent to INSURERS' liability under this insurance.

### **3.2 Discovery of a Claim or CIRCUMSTANCE**

3.2.1 If during the POLICY PERIOD the INSURED receives notice of any claim that is indemnifiable under this insurance other than any claim provided for in 3.2.2, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable;

3.2.2 If during the POLICY PERIOD the INSURED receives a LETTER OF CLAIM, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable and in any event within 7 working days from receipt of such LETTER OF CLAIM and not later than expiry of the POLICY PERIOD;

3.2.3 If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS of such CIRCUMSTANCE as soon as practicable; INSURERS agree that any CIRCUMSTANCE notified to them during the POLICY PERIOD which subsequently gives rise to a claim after expiry of this insurance shall be deemed to be a claim first made during the POLICY PERIOD.

### **3.3 Notice**

Notice to INSURERS under condition 3.2 shall not be valid unless it has been received in writing by the persons shown in the SCHEDULE.

### **3.4 Admission of Liability**

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

### **3.5 Conduct of Claims**

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

If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by the operation of condition 4.3.

## **GENERAL CONDITIONS**

The following general conditions apply to this insurance:-

### **4.1 Conditions Precedent to Liability**

The conditions set out in 4.13 and 4.14 are deemed to be a conditions precedent to INSURERS' liability under this insurance

### **4.2 Retroactive Date**

Where a retroactive date is specified in the SCHEDULE, this insurance shall not indemnify the INSURED for any claims notified to INSURERS and arising out of the exercise and conduct of the INSURED'S BUSINESS prior to the said retroactive date.

### **4.3 Subrogation**

If any payment is made by INSURERS, the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made and the INSURED shall take all reasonable steps to preserve such rights. However, INSURERS agree to waive any rights of recovery against any employee of the INSURED or former employee, self employed person or consultant of the INSURED unless liability has resulted in whole or part from any act or omission on the part of such person which is dishonest, fraudulent, criminal or malicious.

### **4.4 Insurance Disputes**

This insurance is governed by the laws of England and Wales. Any dispute or difference between the INSURED and INSURERS arising from this insurance shall be referred for determination to Senior Counsel of the English Bar, to be mutually agreed between INSURERS and the INSURED, or any other person as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council shall appoint a suitable person. The findings of the agreed or appointed person shall be binding on INSURERS and the INSURED, and the cost of such referral shall be allocated by the agreed

or appointed person on a fair and equitable basis.

### **4.5 Claim Settlements**

INSURERS may at any time pay to the INSURED in connection with any claim or claims the INDEMNITY LIMIT (less any sums already paid including DEFENCE COSTS) or any lesser sum for which such claim or claims can be settled and upon such payment INSURERS shall not be under any further liability in respect of such claim or claims.

### **4.6 Contracts (Rights Of Third Parties) Act 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999, and for the avoidance of doubt:

4.6.1 this insurance is not intended to confer any enforceable rights upon any third party, whether or not an interest of such third party is acknowledged by INSURERS;

4.6.2 the parties to this insurance shall be entitled to rescind or vary this insurance without the consent of any third party, whether or not an interest of such third party is acknowledged by INSURERS;

4.6.3 in the event of proceedings by a third party against INSURERS for the enforcement of any provision of this insurance, INSURERS shall have available to them any defence or set off which would have been available if the proceedings had been brought by the INSURED.

### **4.7 Several Liability Notice**

The subscribing INSURERS' obligations under insurances to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing INSURERS are not responsible for the subscription of any co-subscribing INSURER who for any reason whatsoever does not satisfy all or part of its obligations.

**4.8 Disclaimer of Liability by Insurers**

In the event of INSURERS at any time being entitled to avoid this insurance *ab initio* by reason of any materially inaccurate or misleading information given to INSURERS in the written declaration or at any time during the negotiations leading to the inception of this insurance or as a result of failure to disclose material facts before the inception of this insurance or for any other reason at law, INSURERS may at their election instead of avoiding this insurance *ab initio* give notice to the INSURED that they regard this insurance as being of full force and effect except that there shall be excluded from the indemnity provided hereunder any claim which has arisen or which may arise out of any CIRCUMSTANCE which ought to have been disclosed to INSURERS in the written proposal or which arises out of materially inaccurate or misleading information given to INSURERS.

**4.9 Data Protection Act 1998**

It is understood by the INSURED that any information provided to INSURERS regarding the INSURED will be processed by INSURERS in compliance with the provisions of the Data Protection Act 1998 for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

**4.10 Cancellation**

This insurance may be cancelled at any time by or on behalf of INSURERS by 90 days' notice given in writing to the INSURED at the INSURED's last known address or registered office (if a company) and the premium will be adjusted on a pro rata basis.

**4.11 Combined claims**

Where the same original cause or single source or event gives rise to an entitlement on the part of the INSURED to indemnity under Insuring Clauses 1.1, 1.2, and any Extension(s) under this insurance, the maximum amount payable by INSURERS under all

Insuring Clauses 1.1, 1.2, and any such extension(s) shall not exceed the INDEMNITY LIMIT.

**4.12 Cross Liabilities**

If the INSURED comprises of more than one party the INSURERS will provide indemnity to each in the same manner and to the same extent as if a separate insurance had been issued to each, provided that the total amount payable in respect of damages shall not exceed the INDEMNITY LIMIT.

**4.13 Medical Defence Organisations, Societies and other Insurance**

Any surgeon, physician, doctor or dentist shall belong to and shall subscribe to the Medical Defence Union, Medical Protection Society or other equivalent organisation or shall be otherwise

entitled to indemnity under any other insurance(s) or other contractual or common law or statutory arrangement (including but not limited to Crown Indemnity or its equivalent) against their own malpractice, professional errors, omissions or negligence

**4.14 Student Cover**

Where the INSURED is a student their activities are restricted to performing practice treatments or case studies work and students must not offer treatments outside of their capabilities, which at all times must be governed by the stage reached in their training programme and their tutor's assessment.

## **EXCLUSIONS**

This insurance shall not indemnify the INSURED in respect of any liability directly or indirectly arising out of, or in any way involving:-

### **5.1 Excess**

The EXCESS. DEFENCE COSTS referred to in Insuring Clause 1.2 shall be subject to the EXCESS

### **5.2 Liability involving Transport or Property owned by the INSURED**

The ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the INSURED or any property of the INSURED.

### **5.3 Liability arising out of Employment**

Any injury, disease, illness (including mental stress) or death of any EMPLOYED PERSON under a contract of service with the INSURED or any claim arising out of any dispute between the INSURED and any present or former employee or any person who has been offered employment with the INSURED other than when the EMPLOYED PERSON is a patient of the INSURED.

### **5.4 Supply of Goods**

Any claim or CIRCUMSTANCE arising out of the manufacture, construction, alteration, repair, servicing or treating of any goods or products sold, supplied or distributed, including the sale and/or supply or hardware and/or software by the INSURED. However, this Exclusion shall not exclude any claim or CIRCUMSTANCE in respect of any medicinal products administered by the INSURED to a patient in the course of any treatments.

### **5.5 Fraud, Dishonesty or Criminal or Malicious Act**

Any act, error or omission of the INSURED (including all EMPLOYED PERSONS) which is dishonest,

fraudulent, criminal or malicious, or any claim where the INSURED (including all EMPLOYED PERSONS) has committed a dishonest, fraudulent, criminal or malicious act after discovery by the INSURED of reasonable cause for suspicion that such act has been committed.

### **5.6 Substance Abuse**

Any claim or CIRCUMSTANCE directly or indirectly caused by or contributed to by the INSURED EMPLOYED PERSONS being under the influence of intoxicants or narcotics in the course of professional services in the exercise and conduct of the INSURED'S BUSINESS.

### **5.7 Sexual Abuse and/or Discrimination**

Any claim or CIRCUMSTANCE arising out of alleged sexual harassment and/or sexual molestation and/or sexual discrimination.

### **5.8 Maternity Exclusion**

Any claim of CIRCUMSTANCE brought against any Midwife.

### **5.9 Obstetric Exclusion**

Any claim or CIRCUMSTANCE brought against any medical professional or practitioner arising from any direct or indirect activity in connection with obstetric procedure(s) outside of the NHS.

### **5.10 Contractual Liability**

Any claims arising out of the INSURED'S contractual liability unless such liability would have existed in the absence of such a contract or agreement.

### **5.11 Nuclear Risks**

Any of the following:-

- 5.11.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 5.11.2 the radioactive, toxic, explosive or other hazardous properties of any

explosive nuclear assembly or nuclear component thereof.  
This exclusion shall not exclude any claim or CIRCUMSTANCE by a patient relating to the therapeutic use of radioactivity.

**5.12 War and Terrorism**

Any of the following:-

- 5.12.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- 5.12.2 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
- 5.12.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.12.1 and/or 5.12.2 above.

The burden of proving that a claim or CIRCUMSTANCE does not fall within this Exclusion shall be upon the INSURED.

**5.13 Area of Activities**

Any work or activities undertaken by the INSURED outside the GEOGRAPHICAL LIMITS.

**5.14 Jurisdiction**

Any claim or CIRCUMSTANCE brought (or the enforcement of any judgement or award entered against the

INSURED) outside the courts of the United Kingdom, the Channel Islands or the Isle of Man.

**5.15 Fines, Penalties, Punitive, Multiple or Exemplary Damages**

Fines, penalties, punitive, multiple or exemplary damages.

**5.16 Loss of DOCUMENTS – Magnetic or Electronic**

The physical loss of or damage to DOCUMENTS which are stored on magnetic or electronic media unless such DOCUMENTS are duplicated on magnetic or electronic 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.

**5.17 Other Insurance**

The INSURED having been indemnified or be entitled to indemnity under any other insurance(s) or other contractual or common law or statutory arrangement (including but not limited to Crown Indemnity or its equivalent), this insurance will not respond to any claims pursued by or on behalf of those who have afforded such an indemnity for contribution or indemnity by way of the exercise of rights of subrogation or otherwise. This Exclusion will not apply to Insuring Clause 1.1 (ii).

**5.18 Previous Claims and Circumstances**

Any claim or circumstance that may give rise to a claim which has been notified and accepted by insurers in respect of any other insurance attaching prior to the inception of this insurance or as disclosed as a material fact to INSURERS which formed the basis of this insurance or any claim or circumstance that may give rise to a claim of which the INSURED was or should have been aware prior to the inception of this insurance.

**5.19 Specific medical conditions**

Any claim or CIRCUMSTANCE arising from Hepatitis or any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type III (HTLV

III) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variation thereof or in any way related to Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome or Creutzfeldt-Jakob Disease (CJD) or any syndrome or condition of a similar kind, howsoever it may be named.

**5.20 Libel or Slander and Intellectual Property Rights**

Any claim of CIRCUMSTANCE for libel and slander or in Scotland defamation, or for passing off or breach of any copyright, patent or other intellectual property right.

**5.21 Unlawful Detention**

Any claim or CIRCUMSTANCE arising from any unlawful detention in breach of the Mental Health Act 1983, the Human Rights Act 1998 or any similar common law provisions or any re-enactment.

**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, whether they are used in the plural or singular form, they are deemed to have the meaning set out below:-

**6.1 INSURED**

Shall mean:-

Current Members of the Association for Preoperative Practitioners

**6.2 INSURED'S BUSINESS**

Shall mean the work which would be considered the standard practice in the exercise of skill and care of any of the following -

Support Worker

Theatre Nurse

Operating Department Practitioner

Anaesthetic Assistant

Scrub Nurse/ Practitioner

Circulating Practitioner

Recovery Practitioner

Advanced Scrub Practitioner

Surgical Care Practitioner  
Anaesthetic Practitioner  
Assistant Theatre Practitioner

**6.3 EMPLOYED PERSONS**

Shall mean any persons below but only whilst employed and engaged by the INSURED and under their direct control and supervision:-

6.3.1 An employee under a contract of service;

6.3.2 An individual who is either under a contract of apprenticeship, or supplied, or borrowed by the INSURED or undertaking study or work experience or similar scheme;

6.3.3 A self employed individual who is not in partnership with the INSURED.

EMPLOYED PERSONS are covered against any legal liability in respect of which the INSURED would have been entitled to indemnity under this policy if the claim had been made against the INSURED.

**6.4 LEGAL LIABILITY**

Shall mean a legally enforceable obligation to a third party to pay damages or to make restitution in accordance with an award of a court, tribunal or a regulator under whose jurisdiction the INSURED is bound.

**6.5 INSURERS**

Shall mean the insurance companies or Lloyd's syndicates subscribing to this insurance.

**6.5 SCHEDULE**

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

**6.6 INJURY**

Shall mean bodily injury, death, mental injury, disease, illness, wrongful arrest or false imprisonment.

- 6.7 INDEMNITY LIMIT**  
Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of each claim provided that all claims payable under this insurance including any DEFENCE COSTS shall not exceed in the aggregate the limit shown in the SCHEDULE.
- 6.8 POLICY PERIOD**  
Shall mean the period shown in the SCHEDULE plus any extensions to the period which may be granted by INSURERS.
- 6.9 PRODUCTS LIABILITY**  
Shall mean any solid, liquid, gaseous substance or device or component part thereof, manufactured, constructed, altered repackaged, repaired, services, treated, administered, sold, supplied or distributed by or on behalf of the INSURED.
- 6.10 DEFENCE COSTS**  
Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim or CIRCUMSTANCE notified under the terms of this insurance and/or the cost of representation at any enquiry or other proceedings which have a direct or indirect relevance to the investigation, defence or settlement of any matter notified under the terms of this insurance.
- 6.11 CIRCUMSTANCE**  
Shall mean information or facts or matters of which the INSURED is aware which is likely to give rise to a claim against the INSURED in respect of which the INSURED could become legally liable and which arises out of the exercise and conduct of the INSURED'S BUSINESS.
- 6.12 DOCUMENTS**  
Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, bank or currency notes and other negotiable paper.
- 6.13 LETTER OF CLAIM**  
Shall mean the Letter of Claim as detailed in any applicable Pre-Action Protocol.
- 6.14 CO-OPERATE**  
Shall mean that the INSURED
- 6.16.1 assists INSURERS and their duly appointed representatives to put forward the best possible defence of a claim within the time constraints available;
- 6.16.2 shall have adequate internal systems in place, which will allow ready access to material information;
- 6.16.3 shall at all times and at its own cost give to INSURERS or their duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Civil Procedure Rules, Practice Directions and Pre-Action Protocols and recoveries.; shall pay the EXCESS on demand of INSURERS or their duly appointed representatives to comply with any settlement agreed by INSURERS.
- 6.15 GEOGRAPHICAL LIMITS**  
Shall mean anywhere in the United Kingdom, the Channel Islands and the Isle of Man or as varied in the SCHEDULE.
- 6.16 POLLUTION**  
Shall mean any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing HARM to any person or any living organism, into or onto any water, land or air.

**6.17 HARM**

Shall 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, shall include offence caused to any of their senses.

**6.18 GOOD SAMARTIANS 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.