



ace insurance

Elite Management Liability **POLICY**

INSURED ORGANISATION: [Client]

PERIOD: [From date to]



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Schedule

ACE Insurance Limited
insert address

- Item 1. Policy Number:** Insert policy number
- Item 2. Entity:** Insert name of Insured Organisation
- Principal Address:** Insert address of Insured Organisation
- ABN:** Insert Australian Business Number
- Item 3. Policy Period:** From: dd mm yyyy 4:00pm local time
To: dd mm yyyy 4:00pm local time
- Item 4. Limit of Liability:** \$ in the aggregate for all **Loss** and **Direct Financial Loss**.
- Item 5. Direct Financial Loss:** \$100,000 in the aggregate for all **Direct Financial Loss**.
- Item 6. Pollution Defence Costs:** \$500,000 in the aggregate for all **Pollution Defence Costs**.
- Item 7. Pecuniary Penalties:** \$250,000 in the aggregate for all pecuniary penalties or the **Limit of Liability** in Item 4, whichever is the lesser.
- Item 8. Crisis Costs:** (a) \$25,000 for each claim for **Crisis Costs**.
(b) \$50,000 in the aggregate for all claims for **Crisis Costs**.
- Item 9. Additional Excess Limit for Non Executive Directors:** (a) Each **Non Executive Director** excess limit: \$ for each **Non Executive Director**.
(b) **Non Executive Directors** excess aggregate limit: \$ in the aggregate for all **Non Executive Directors** for all **Claims**.
- Item 10. Deductible:** (a) Insuring Clause 1.1 \$ Nil each and every **Claim**.
(b) Insuring Clause 1.2, 1.4, 1.5 and Extension 3.9 \$ each and every **Claim**.

Signed for and on behalf of ACE Insurance Limited



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(c) Insuring Clause 1.3 \$ each and every **Claim**.

(d) Insuring Clause 1.6 \$ each and every **Direct Financial Loss**.

Item 11. Date of Continuous Cover: Insert date

Item 12. Crime Continuity Date: Insert date

Item 13. Premium: As Agreed

Item 14. Endorsements Effective at Inception:

- (a)
- (b)
- (c)

ENDORSEMENTS



POLICY WORDING

In consideration of the payment of the **Premium** and in reliance upon all statements made and information provided to ACE Insurance Limited ABN 23 001 642 020 ("ACE"), including statements made in the **Proposal** and materials accompanying it, which it is agreed shall form the basis of this insurance, and subject to all the terms, conditions, exclusions and limitations of this **Policy**, ACE agrees as follows:

1. Insuring Clauses

1.1 Directors and Officers Liability

ACE will pay to or on behalf of the **Insured Persons**, **Loss** for which they are not indemnified by the **Insured Organisation** for any **Claim**, provided that the **Claim** is first made against the **Insured Person** during the **Policy Period** or an applicable **Discovery Period**.

1.2 Company Reimbursement

ACE will pay to or on behalf of the **Insured Organisation**, **Loss** for which the **Insured Organisation** is permitted to pay the **Insured Person** by way of indemnification as a result of any **Claim**, provided that the **Claim** is first made against the **Insured Person** during the **Policy Period** or an applicable **Discovery Period**.

1.3 Employment Liability – Insured Organisation

ACE will pay to or on behalf of the **Insured Organisation**, **Loss** for any **Claim** for an **Employment Practice Breach** by the **Insured Organisation**, provided the **Claim** is first made against the **Insured Organisation** during the **Policy Period** or an applicable **Discovery Period**.

1.4 Superannuation Trustee Liability

ACE will pay to or on behalf of any **Trustee**, **Loss** for any **Claim** for **Breach of Trustee Duty**, provided the **Claim** is first made against the **Trustee** during the **Policy Period** or an applicable **Discovery Period**.

1.5 Insured Organisation Liability

ACE will pay to or on behalf of the **Insured Organisation**, **Loss** for any **Claim** for a **Wrongful Act** by the **Insured Organisation**, provided that the **Claim** is first made against the **Insured Organisation** during the **Policy Period** or an applicable **Discovery Period**.

1.6 Employee Crime

ACE will indemnify the **Insured Organisation** for **Direct Financial Loss** sustained by the **Insured Organisation** resulting directly from any **Fraudulent Act** provided that the **Direct Financial Loss** is both discovered by the **Insured Organisation** and notified to ACE during the **Policy Period**.

2. Definitions

2.1 Benefit

means any amount payable to a beneficiary of a **Fund** by the **Trustee** under the governing rules of the **Fund**.

2.2 Breach of Trustee Duty



means any **Wrongful Act** of a **Trustee** in connection with a **Fund**.

2.3 Change in Exposure

means, in respect of the entity shown in Item 2 of the Schedule, any of the following events occurring during the **Policy Period**:

- (a) it or all of its assets are acquired by another entity;
- (b) it merges or consolidates into or with another entity;
- (c) any person, entity or affiliated group of persons and/or entities obtains the right or power to elect, appoint or designate at least fifty percent (50%) of the directors of it; or
- (d) any person, entity or affiliated group of persons and/or entities acquires fifty percent (50%) or more of the issued capital of it.

2.4 Claim means:

- (a) For the purpose of all Insuring Clauses (other than 1.6) as applicable:
 - (i) any written demand for compensation or damages;
 - (ii) any civil proceeding commenced by a writ, complaint, summons, statement of claim or similar originating process including any arbitration, mediation, conciliation or alternative dispute resolution proceeding;
 - (iii) any criminal proceeding or **Extradition Proceeding**;
 - (iv) any formal administrative or regulatory proceeding

for a **Wrongful Act** or series of related or continuous **Wrongful Acts**, and an appeal from such a proceeding. An allegation of a **Wrongful Act** is not required for cover under Insuring Clauses 1.1 and 1.2 for an **Extradition Proceeding**.

- (b) For the purpose of Extension 3.9 only, an **Investigation**. A **Wrongful Act** is not required for cover under Extension 3.9.

The **Claim** is made when the **Insured** receives the demand or is served with the originating process commencing the proceeding, or notice or other formal process compelling attendance at the **Investigation**.

2.5 Compensation Order

means any court order against an **Insured Person** requiring payment by the **Insured Person** of compensation, resulting from a contravention of any statute or legislative provision.

2.6 Crime Continuity Date

means the date shown in Item 12 of the Schedule.

2.7 Crisis Costs

means **Crisis Loss Costs**, **Extradition Crisis Costs**, **Extradition Bail Bond Costs** and **Public Relations Expenses**.



2.8 Crisis Event

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

- (a) the sudden, unexpected death or disability of any director or **Officer**;
- (b) the sudden loss of a major customer, contract or credit facility;
- (c) employee workplace violence;
- (d) the first apparent unauthorised intrusion into the computer facilities of the **Insured Organisation**;
- (e) a recall or boycott of any product;
- (f) a man made disaster;
- (g) any criminal or fraud investigation.

Crisis Event is an event that affects an **Insured Organisation** specifically and does not include an event that affects an industry in general.

2.9 Crisis Loss Costs

means the reasonable costs and expenses paid by an **Insured Organisation** for external crisis management services provided in response to a **Crisis Event** within the first 30 days after the **Crisis Event**.

2.10 Date of Continuous Cover

means the date shown in Item 11 of the Schedule.

2.11 Deductible means:

- (a) for a **Claim**, the amount shown in Item 10 (a)-(c) of the Schedule, being the sum that is payable by the **Insured** in respect of each and every **Claim** covered by this **Policy**;
- (b) for a **Direct Financial Loss**, the amount shown in Item 10 (d) of the Schedule, being the sum that is payable by the **Insured Organisation** in respect of each and every **Direct Financial Loss** covered by this **Policy**. A series of related, repeated or continuous **Fraudulent Acts** by an **Employee** shall be treated as giving rise to a single **Direct Financial Loss** for the purpose of applying the **Deductible**.

In the event that any **Claim** falls under more than one Insuring Clause, Extension or Endorsement, then the applicable **Deductible** will be applied to each Insuring Clause, Extension or Endorsement, however, the total amount payable by the **Insured** in respect of each **Claim** covered by this **Policy** will not exceed the highest applicable **Deductible**.

2.12 Defence Costs

means any reasonable legal fees or costs and expenses which the **Insured** incurs with the prior written consent of ACE (which shall not be unreasonably delayed or withheld) to defend, investigate, settle or



appeal a **Claim. Defence Costs** does not include wages, salaries or other remuneration or internal costs or overheads of any **Insured**.

2.13 Direct Financial Loss

means loss of **Property** sustained by the **Insured Organisation** as a direct result of a **Fraudulent Act**. **Direct Financial Loss** does not include:

- (a) salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **Direct Financial Loss**, except as provided in Extension 3.4;
- (c) physical destruction to any premises, or to any property situated on the premises;
- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **Direct Financial Loss** covered by this **Policy**;
- (f) interest or other consequential loss.

Direct Financial Loss is discovered when the **Insured Organisation** or one of its directors or **Officers** (not in collusion with the **Employee** who committed the **Fraudulent Act**), first becomes aware of a **Fraudulent Act**.

The sub-limit of liability for all **Direct Financial Loss** is the sub-limit specified in Item 5 of the Schedule. This sub-limit is part of and not in addition to the **Limit of Liability**.

2.14 Discovery Period means:

- (a) in Extension 3.12 "Non-Renewal Discovery Periods" the automatic 30 day period, or the optional period of 12 months, from the expiration of the **Policy Period**;
- (b) in Extension 3.6 "Discovery Period following a Change in Exposure" the period of up to 84 months.

2.15 Employee

means any natural person employed by the **Insured Organisation** in the ordinary course of its business who is paid by the **Insured Organisation** by way of salary or wages and the performance of whose duties is subject to the direction and control of the **Insured Organisation**. It does not include contractors, agents or labour hire personnel supplied to the **Insured Organisation**.



2.16 Employment Practice Breach

means any actual or alleged:

- (a) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy
- (b) unlawful termination of employment;
- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices; or
- (i) breach of employment contract

with respect to any natural person who was, now is or becomes an **Employee** of the **Insured Organisation** including prospective employees.

2.17 Extradition Bail Bond Costs

means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an **Insured Person**'s contingent obligation for bail required by a court in respect of an **Extradition Proceeding**.

2.18 Extradition Crisis Costs

means any reasonable legal fees or costs and expenses of any accredited:

- (a) counsellor; or
- (b) tax advisor

retained by an **Insured Person**, during the **Policy Period**, with ACE's prior written consent (which shall not be unreasonably delayed or withheld), in respect of an **Extradition Proceeding**.

2.19 Extradition Proceeding means:

- (a) a written request for extradition of an **Insured Person**, a warrant for the arrest of an **Insured Person** or other proceedings commenced by a writ, complaint, summons or other originating process against an **Insured Person** under the provisions of the *Extradition Act 1988 (Cth)* and/or any associated regulations;



- (b) any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the *Extradition Act 1988 (Cth)*;
- (c) the equivalent of the above in any other jurisdiction.

A **Wrongful Act** of an **Insured Person** is not required for cover for an **Extradition Proceeding**.

2.20 Fraudulent Act

means a single act, or series of related, continuous or repeated acts, of fraud, dishonesty or theft committed by an **Employee**, acting alone or in collusion with others, PROVIDED THAT:

- (a) the acts of fraud, dishonesty or theft were committed with the clear intention to cause the **Insured Organisation** to sustain a **Direct Financial Loss**; and
- (b) such **Direct Financial Loss** is sustained after the **Crime Continuity Date** in Item 12 of the Schedule.

2.21 Fund

means any single employer superannuation or similar fund established for the benefit of any **Employee**. It does not include any industry or master superannuation funds.

2.22 Insured

means either in the singular or plural, means the **Insured Organisation** and the **Insured Persons**.

2.23 Insured Organisation

means the entity shown in Item 2 of the Schedule and any **Subsidiary** which was acquired, created or incorporated prior to the commencement of the **Policy Period**.

2.24 Insured Person

means any natural person who was, now is or becomes during the **Policy Period**:

- (a) a director, **Officer**, secretary, alternate director, shadow director or de facto director of the **Insured Organisation**;
- (b) an **Employee** of the **Insured Organisation**;
- (c) a director, **Officer** or **Employee** of the **Insured Organisation** serving in an **Outside Directorship**.

The term **Insured Person** does not include any auditor or trustee, receiver, receiver and manager, liquidator, administrator, mortgagee in possession or the like or any employees of such person. It does not include any employee of an **Outside Organisation**.

2.25 Investigation

means any official investigation, inquiry or examination into the affairs of the **Insured Organisation**, or the conduct of an **Insured Person** as a director or **Officer** of the **Insured Organisation**, which the **Insured(s)** is/are legally compelled to attend by official notice or process.



2.26 Investigator

means any independent investigator, accountant or other consultant, who does not have a conflict of interest, selected by the **Insured Organisation** with the prior written consent of ACE (which shall not to be unreasonably delayed or withheld), to establish the nature and extent of any **Direct Financial Loss**.

2.27 Legal Representation Expenses

means the reasonable legal fees or costs and expenses which an applicable **Insured** incurs with the consent of ACE (which shall not be unreasonably delayed or withheld) for legal representation in relation to an **Investigation** (but not including wages, salaries or other remuneration, internal costs or overheads of any **Insured**).

2.28 Limit of Liability

means the amount shown in Item 4 of the Schedule which (subject to Extension 3.1) is ACE' s maximum aggregate liability for all **Loss, Direct Financial Loss** and Crime Costs under this **Policy** irrespective of the number, timing or amount of **Claims, Investigations** or **Fraudulent Acts** or the number of **Insureds** who claim. The **Limit of Liability** is payable in excess of the **Deductible**. The **Limit of Liability** is inclusive of all sub-limits of liability.



2.29 Loss

means all amounts which an **Insured** is legally obligated to pay in respect of a **Claim** including but not limited to:

- (a) any damages awarded (including aggravated, punitive or exemplary damages), judgments entered, settlements reached;
- (b) **Defence Costs;**
- (c) **Legal Representation Expenses;**
- (d) **Compensation Orders;**
- (e) **Crisis Costs** (other than **Crisis Loss Costs**).

Loss does not include:

- (i) amounts for which, when allocated under clause 5.1 (Allocation of Loss), ACE is not liable to indemnify under this **Policy;**
- (ii) fines or penalties imposed by law, other than those penalties covered by Extension 3.15 (Pecuniary Penalties);
- (iii) any matters which are deemed uninsurable at law;
- (iv) taxes or sums payable in relation to taxes;
- (v) any multiplied portion of any damages awarded;
- (vi) for a **Claim** based on an **Employment Practice Breach**, any amount the **Insured Organisation** is required to pay in respect of an allegedly unfair contract or any employment-related compensation or benefits;
- (vii) internal or overhead expenses of any **Insured;**
- (viii) the cost of complying with non-monetary order or relief;
- (ix) any costs and expenses of any kind in connection with any uncovered matter in (i)-(viii) above.

For the purpose of Extension 3.5, **Loss** means **Crisis Loss Costs**.

2.30 Money

means only bank notes, coins, bullion, cheques, travellers cheques, postal orders and money orders.

2.31 Non Executive Director

means any natural person who serves as a non executive director of the **Insured Organisation**.

2.32 Non-Profit Organisation

means any organisation or body that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the constituent document(s) of the organisation or body, prohibited from making any distribution, whether in money, property or otherwise, to its members.



2.33 Officer

means any natural person who:

- (a) is a secretary of a corporation;
- (b) is concerned in, or takes part in, the management of an organisation whether or not that person is a director and regardless of the name given to the position;
- (c) makes or participates in making, decisions that affect the whole or a substantial part of the business of an organisation;
- (d) has the capacity to affect significantly an organisation's financial standing;
- (e) is a contractor who acts as a member of a committee duly elected or appointed by resolution of the Board of Directors of the **Insured Organisation** to perform specific, as distinguished from general, directorial acts on behalf of the **Insured Organisation**.

2.34 Outside Directorship

means the position of director or **Officer** held by an **Insured Person** in an **Outside Organisation** at the written request of the **Insured Organisation**.

2.35 Outside Organisation means:

- (a) any **Non-Profit Organisation**;
- (b) any entity listed in the Schedule of **Outside Directorships** endorsement attaching to and forming part of this **Policy** (if any)

in which an **Insured Person** holds an **Outside Directorship**.

2.36 Policy means:

- (a) the Insuring Clauses, Definitions, Extensions, Exclusions and Conditions; and
- (b) any Endorsement attaching to and forming part of this **Policy** either at the commencement of the **Policy Period** or during the **Policy Period**; and
- (c) the Schedule.

2.37 Policy Period

means the period shown in Item 3 of the Schedule.

2.38 Pollutants

means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by an environmental protection agency (including but not limited to United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof). Such substances include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** also mean any other air emission, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, mould, noise, and electric or magnetic or electromagnetic field. Waste includes material to be recycled, reconditioned or reclaimed.



2.39 Premium

means the sum specified in Item 13 of the Schedule as the premium or as otherwise agreed, and any additional premium shown in any Endorsement attaching to and forming part of this **Policy**.

2.40 Prior Known Fact

means any fact or matter which:

- (a) an **Insured** first became aware of, after the **Date of Continuous Cover** but prior to the commencement of the **Policy Period**; and
- (b) the **Insured** knew, or a reasonable **Insured** would have considered, at any time after the **Date of Continuous Cover** but prior to the commencement of the **Policy Period**

might result in an allegation against an **Insured** of a **Wrongful Act** or might result in an **Investigation** or **Extradition Proceeding**.

2.41 Property

means **Money**, **Securities** and other property owned by the **Insured Organisation** or for which it is legally liable.

2.42 Proposal

means the written proposal and any supplementary proposal, including any statements and information contained or incorporated by reference therein, submitted to ACE by the **Insured**.



2.43 Public Relations Expenses

means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which any **Insured** in the reasonable exercise of their discretion may engage with the prior written consent of ACE (which shall not be unreasonably delayed or withheld) to prevent or limit adverse effects or negative publicity in respect of a covered **Claim**.

2.44 Retired Director or Officer

means a director or **Officer** who has ceased to hold such office prior to expiry of the **Policy Period** for any reason other than a **Change in Exposure** or disqualification from holding office as a director or **Officer**.

2.45 Securities means

- (a) for the purpose of Insuring Clauses 1.1, 1.2, 1.3, 1.4 & 1.5 any shares, stocks, debentures, notes, evidence of indebtedness, other equity or debt securities or any other interest in the **Insured Organisation**, and any right to purchase, subscribe to or vote with respect to such interests;
- (b) for the purpose of Insuring Clause 1.6 any negotiable or non-negotiable instruments or contracts representing money or other property, but excluding **Money**.

2.46 Subsidiary

means any company in relation to which the entity shown in Item 2 of the Schedule:

- (a) controls the composition of the Board of Directors;
- (b) controls the voting power at any general meeting;
- (c) holds greater than 50% of the issued voting share capital.

In relation to any **Subsidiary** that is sold, dissolved or otherwise disposed of prior to the expiration of the **Policy Period**, this **Policy** does not provide cover in respect of any **Wrongful Act**, **Fraudulent Act** or conduct occurring after the sale, disposal or dissolution of such **Subsidiary**.

This **Policy** does not provide cover in respect of any **Wrongful Act**, **Fraudulent Act** or conduct occurring prior to the acquisition, creation or incorporation of such **Subsidiary**.

2.47 Trustee means

- (a) all natural persons who were, are or shall be trustees of a **Fund**;
- (b) any body corporate which was, is or shall be a trustee of a **Fund**;
- (c) all natural persons who were, are, or shall be an **Employee** of any body corporate in (b) above all while acting in such **Trustee** capacity.

2.48 Wrongful Act means

- (a) for Insuring Clause 1.1 and 1.2, any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement, including but not limited to an **Employment Practice Breach**, by an **Insured Person** while acting in his or her capacity as an



Insured Person or any matter claimed against an **Insured Person** solely by reason of his or her status as such, but excluding any **Breach of Trustee Duty**;

- (b) for Insuring Clause 1.3, any actual or alleged **Employment Practice Breach** by an **Insured Organisation**;
- (c) for Insuring Clause 1.4, any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by a **Trustee** in that capacity;
- (d) for Insuring Clause 1.5, any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement, (other than an **Employment Practice Breach** and **Breach of Trustee Duty**), by an **Insured Organisation**.



3. Extensions

Subject to all of the terms, conditions, exclusions and limitations of this **Policy** (including the Insuring Clauses and the Schedule), cover is extended by the following Extensions. These Extensions (other than 3.1) do not increase the **Limit of Liability** unless ACE otherwise agrees in writing.

3.1 Additional Excess Limit for Non Executive Directors

ACE will pay to or on behalf of each **Non Executive Director**, **Loss** for any **Claim** against such **Non Executive Director** provided that:

- (a) the **Limit of Liability**; and
- (b) all indemnification for **Loss** available to such **Non Executive Director** provided by the **Insured Organisation** or **Outside Organisation**

have been exhausted, and only where:

- (i) any other policy entered into by the **Non Executive Director** whether prior or current, which covers any part of that **Loss** is exhausted; or
- (ii) any other policy effected on behalf of the **Non Executive Director** or under which the **Non Executive Director** is a beneficiary (but not a policy to which 3.1(i) applies), whether prior or current, which covers any part of that **Loss** is exhausted.

The sub-limit of liability under Extension 3.1 for each **Non Executive Director** will be the lesser of the **Limit of Liability** specified in Item 4 of the Schedule or the amount specified in Item 9(a) of the Schedule and is part of and not in addition to the limit of liability in Item 9(b) of the Schedule.

ACE's maximum aggregate liability for all **Loss** under Extension 3.1 for all **Non Executive Directors** irrespective of the number of **Claims** or **Investigations** under this **Policy** or the number of **Non Executives Directors** who claim and irrespective of the amounts of any such **Claims** or **Investigations** or when they are made will be the lesser of the **Limit of Liability** specified in Item 4 of the Schedule or the amount shown in Item 9(b) of the Schedule. The limit of liability under Extension 3.1 is in addition to, and not part of, the **Limit of Liability** in Item 4 of the Schedule.

3.2 Advance Payment of Defence Costs and other Loss

Subject to the **Limit of Liability** and the **Deductible**, ACE will advance **Defence Costs**, **Legal Representation Expenses** and **Crisis Costs** in Extension 3.5(a)-(c) as they are incurred and prior to the finalisation of any **Claim** or **Investigation**. ACE will pay **Crisis Loss Costs** when they are submitted by the **Insured Organisation** for payment. To the extent that it is established that the **Insured Person** and/or the **Insured Organisation** was or were not entitled to such payments, the **Insured Person** and/or the **Insured Organisation** will severally and according to their respective interests, repay those payments to ACE.

For the avoidance of doubt, ACE will not rely on Exclusion 4.2 (Dishonesty, Fraud or Personal Profit), whether in respect of this clause or otherwise, until the conduct in question has been established by admission, court judgment or any other final adjudication.

3.3 Continuous Cover



Notwithstanding Exclusion 4.7(d) (Prior Matters), with respect to Insuring Clauses other than 1.6, ACE will pay **Loss** for any **Claim** first made against the **Insured** during the **Policy Period** or applicable **Discovery Period** arising from a **Prior Known Fact** provided that:

- (a) the **Claim** would be covered under this **Policy** but for the operation of Exclusion 4.7(d) (Prior Matters); and
- (b) the **Insured** has maintained without interruption, management liability insurance with ACE or another insurer from the **Date of Continuous Cover** up until the date this **Policy** commenced; and
- (c) the **Insured** would have been indemnified under the management liability insurance policy in force at the relevant time if the **Prior Known Fact** had been notified to the applicable insurer when the **Insured** first became aware of it; and
- (d) neither the **Claim** nor the **Prior Known Fact** has been notified to ACE or to any other insurer under any other policy; and
- (e) there has been no fraudulent non disclosure or fraudulent misrepresentation to ACE in respect of such **Prior Known Fact**; and
- (f) cover under this Extension will be in accordance with the terms, conditions, exclusions and limitations (including the Insuring Clauses, Schedule, limit of liability and deductible) of the policy in force at the time the **Insured** first became aware of the **Prior Known Fact**, but only where such earlier policy affords no broader, greater or wider cover in respect of the **Claim** than the provisions of this **Policy**.

3.4 Crime Costs

In respect of the cover under Insuring Clause 1.6, ACE will reimburse any reasonable expenses incurred and paid by the **Insured Organisation** to an **Investigator**, in establishing the existence and amount of any **Direct Financial Loss** covered under Insuring Clause 1.6. Under this Extension, reasonable expenses shall not include wages, salaries, time costs and expenses or other remuneration of any **Insured**.

The sub-limit of liability for all payments under this Extension is \$25,000. This sub limit is part of and not in addition to the **Limit of Liability**. No **Deductible** shall apply to this Extension.

3.5 Crisis Costs

ACE will pay to or on behalf of:

- (a) an **Insured Person, Extradition Bail Bond Costs**;
- (b) an **Insured Person, Extradition Crisis Costs**;
- (c) an **Insured, Public Relations Expenses**,

in respect of any **Claim** first made during the **Policy Period** or an applicable **Discovery Period**.

ACE will pay to or on behalf of the **Insured Organisation**, **Crisis Loss Costs** arising from a **Crisis Event** occurring and notified to ACE in the **Policy Period**.



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The sub-limit of liability for each claim for **Crisis Costs** is the amount shown in Item 8(a) of the Schedule. The amount shown in Item 8(b) of the Schedule is ACE's maximum aggregate liability for all claims for **Crisis Costs** under Extension 3.5. This sub-limit is part of and not in addition to the **Limit of Liability**.

3.6 Discovery Period following a Change in Exposure

If there is a **Change in Exposure**, ACE will only pay:

- (a) **Loss** for any **Wrongful Acts** committed prior to the **Change in Exposure** and which is otherwise covered by this **Policy**;
- (b) **Legal Representation Expenses** for any **Investigation** in respect of conduct committed prior to the **Change in Exposure** and which is otherwise covered by this **Policy**.

However, the **Insured** may, up to 30 days after the **Change in Exposure**, request an offer from ACE for a **Discovery Period** of up to 84 months. Upon such request and following the receipt by ACE of any requested information, ACE shall offer to extend the cover under this **Policy** for a **Discovery Period** of up to 84 months on such terms and conditions and at such premium as it may decide in its discretion. Any additional premium will be non-refundable. Any extended cover will apply only to **Claims** for a **Wrongful Act** committed before the **Change in Exposure** or **Investigations** in respect of conduct committed before the **Change in Exposure**, and notified to ACE before the expiry of the **Discovery Period**.

3.7 Emergency Defence Costs and Legal Representation Expenses

Notwithstanding any provision in the **Policy** to the contrary, if it is not possible for the **Insured** to obtain ACE's consent prior to the incurring of **Defence Costs** or **Legal Representation Expenses**, ACE will waive prior consent as long as ACE's consent is obtained within 30 days of the first of such **Defence Costs** or **Legal Representation Expenses** being incurred. The sub-limit of liability for all payments under this Extension is 10% of the **Limit of Liability**. This sub-limit is part of and not in addition to the **Limit of Liability**.

3.8 Estates, Heirs & Legal Representatives

With respect to Insuring Clauses 1.1, 1.2, 1.3 and 1.4, ACE will pay loss for any claim first made against the estates, heirs, legal representatives or assigns of any deceased, incompetent, insolvent or bankrupt **Insured Person**, provided that the claim:

- (a) arises directly from a **Claim** made against the **Insured Person** which is covered under the **Policy**; and
- (b) is made solely by reason of their status as estates, heirs, legal representatives or assigns of the deceased, incompetent, insolvent or bankrupt **Insured Person**.

3.9 Legal Representation Expenses

- (a) With respect to Insuring Clauses 1.1 or 1.2 only, ACE will pay **Legal Representation Expenses** in respect of an **Investigation** for which the notice or process compelling the attendance of the **Insured Person** is first served in the **Policy Period** or an applicable **Discovery Period**. The cover under this Extension is part of the **Limit of Liability** and not in addition to it. If the **Insured**



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Organisation does not indemnify the **Insured Person(s)** for the **Legal Representation Expenses**, no **Deductible** shall apply to this Extension.

- (b) With respect to Insuring Clause 1.5 only, ACE will pay **Legal Representation Expenses** in respect of an **Investigation** for which the notice or process compelling the attendance of the **Insured Organisation** is first served in the **Policy Period** or an applicable **Discovery Period**. The sub-limit of liability for all payments to all **Insured Organisations** under Extension 3.9(b) in connection with all **Investigations** is \$100,000 in the aggregate. This sub-limit is part of and not in addition to the **Limit of Liability**.

3.10 Liability of an Insured Person's Spouse or Domestic Partner

With respect to Insuring Clauses 1.1, 1.2, 1.3 and 1.4, ACE will pay loss for any claim first made against the lawful spouse or domestic partner of any **Insured Person** during the **Policy Period** or an applicable **Discovery Period**, provided that the claim arises directly from a **Claim** made against the **Insured Person** which is covered under the **Policy** and is made solely by reason of the spouse's or domestic partner's:

- (a) status as such; and
- (b) ownership interest in any real or personal property against which the claimant seeks recovery for an alleged **Wrongful Act** of the **Insured Person**.

3.11 New Subsidiaries

- (a) Automatic Cover for New Subsidiaries

If during the **Policy Period** or an applicable **Discovery Period**, the **Insured Organisation** acquires or creates a **Subsidiary** that:

- (i) increases the **Insured Organisation's** total assets by no greater than 20% based on the **Insured Organisation's** latest audited consolidated financial statements or annual report; and
- (ii) has no public listing of securities; and
- (iii) is not domiciled in the United States of America or its territories or Canada,

then ACE will:

- (iv) pay **Loss** under the applicable Insuring Clause for any **Claim** against the **Insured Persons** of that **Subsidiary**, or the **Subsidiary**, for **Wrongful Acts** committed in whole after the effective date of such acquisition or creation;
- (v) indemnify the **Subsidiary** for **Direct Financial Loss** in accordance with Insuring Clause 1.6 but only in respect of a **Fraudulent Act** committed in whole after the effective date of such acquisition or creation.

- (b) Optional Cover for Certain New Subsidiaries

With the agreement of ACE and subject to any additional premium, terms and conditions, cover under this **Policy** may be extended in respect of any newly acquired or created **Subsidiary**.



- (i) that increases the **Insured Organisation'** s total assets by more than 20% based on the **Insured Organisation'** s latest audited consolidated financial statements or annual report;
- (ii) has public listing of securities;
- (iii) is domiciled in the United States of America or its territories or Canada

for **Wrongful Acts, Fraudulent Acts** or other conduct that were or was committed in whole after the acquisition or creation of the **Subsidiary**.

3.12 Non-Renewal Discovery Periods

If, on expiry, any coverage clause or component under this **Policy** is neither renewed or replaced with a policy of insurance providing such coverage with any insurer, any **Insured** is entitled to a **Discovery Period** of 30 days automatically for no additional premium or may, subject to the payment of an additional premium of 100% of the **Premium**, extend the cover under this **Policy** for a **Discovery Period** of 12 months from the expiration of the **Policy Period** PROVIDED THAT:

- (a) the extended cover applies only in respect of:
 - (i) **Wrongful Acts, Fraudulent Acts** and other conduct wholly committed before the expiry of the **Policy Period** and notified to ACE before the expiry of the **Discovery Period**; and
 - (ii) that coverage clause of this **Policy** that is neither renewed nor replaced with a policy providing coverage to that effect.
- (b) to exercise this **Discovery Period** the **Insured** must, within the 30 day period after the expiration of the **Policy Period**:
 - (i) provide written notice to ACE of the intention to exercise the 12 month option; and
 - (ii) pay the additional premium.
- (c) if ACE offers renewal terms and conditions ACE shall not be liable to make any payment in respect of any **Direct Financial Loss** discovered by, or **Claim** first made against, the **Insured** during the **Discovery Period** if at any time during the **Discovery Period** the **Insured** obtains any other management liability insurance policy which is similar to this **Policy**, or cover under another policy to the same effect as the coverage clause or component under this **Policy** not renewed or replaced;
- (d) the **Insured** shall not have the right to purchase the 12 month **Discovery Period** under this Extension 3.12 in the event of any cover under this Policy being maintained in accordance with Extension 3.6 or Extension 3.17;
- (e) the **Discovery Period** is not available in the event this **Policy** is cancelled or avoided. Any additional premium payable under this Extension will be fully earned upon payment and will be non-refundable. The **Insured** agrees that ACE's offer of renewal terms, conditions, limits of liability or premium different from those of this **Policy** does not constitute a refusal to renew.

3.13 Occupational Health and Safety

Notwithstanding Exclusion 4.1 (Bodily Injury) and Exclusion 4.9 (Property Damage), under Insuring Clauses 1.1 and 1.2 ACE will pay **Defence Costs** in respect of any **Claim** for an alleged **Wrongful Act**, or



Legal Representation Expenses in respect of an **Investigation** involving conduct, which if proven would constitute a breach of occupational health and safety legislation.

For the avoidance of doubt, this Extension provides such cover in respect of alleged workplace manslaughter and industrial or workplace deaths.

3.14 Outside Directorship Cover

With respect to Insuring Clauses 1.1 and 1.2, and Extension 3.9, ACE will pay **Loss** for any **Claim** or **Investigation** in respect of an **Outside Directorship**, provided that the **Claim** is for a **Wrongful Act**, or **Investigation** is in respect of conduct, which occurred during the course of and prior to the **Outside Directorship** ceasing. This Extension does not afford any cover for **Claims** by employees of any **Outside Organisation** which, if they were **Employees** of the **Insured Organisation**, would be for an **Employment Practice Breach**.

3.15 Pecuniary Penalties

Under Insuring Clauses 1.1 and 1.2, ACE will pay pecuniary penalties awarded pursuant to the laws of and in the jurisdictions of Australia or New Zealand, against an **Insured Person** for:

- (a) a civil offence;
- (b) a strict liability offence in connection with a breach of any occupational health and safety law or regulation. This part of the Extension applies notwithstanding Exclusion 4.1 (Bodily Injury);
- (c) a strict liability offence in connection with the discharge, release, dispersal or escape of **Pollutants**. This part of the Extension applies notwithstanding Exclusion 4.6 (Pollution)

provided ACE is not legally prohibited from paying such penalties and the conduct giving rise to the penalty was not reckless, grossly negligent or a knowing violation of any law or regulation. This Exclusion only applies where the conduct in question has been established by admission, court judgment or other final adjudication.

No fact pertaining to, conduct of or knowledge possessed by an **Insured Person** will be imputed to any other **Insured Person** to determine whether the Exclusion in this Extension applies.

The sub-limit of liability for all payments in the aggregate under this Extension is specified in Item 7 of the Schedule. This sub-limit is part of and not in addition to the **Limit of Liability**.

3.16 Pollution Defence Costs

ACE will pay to or on behalf of any **Insured Person**, **Defence Costs** in respect of any **Claim**, or **Legal Representation Expenses** in respect of an **Investigation**, otherwise excluded by Exclusion 4.6 (Pollution).

The sub-limit of liability for all payments under this Extension is specified in Item 6 of the Schedule. This sub-limit is part of and not in addition to the **Limit of Liability**.

3.17 Retired Directors & Officers

If this **Policy** is cancelled by the **Insured** or not renewed or replaced with any other policy affording cover to the same effect as Insuring Clauses 1.1 and/or 1.2 and provided there has not been a **Change in Exposure**, the cover provided by this **Policy** under Insuring Clauses 1.1 and 1.2 shall extend to indemnify any **Retired Director or Officer** who had, for any reason, ceased to hold such position prior to the date



of such cancellation or non-renewal, in respect of **Claims** made against such persons during the period of 84 months immediately following the date of such cancellation or non-renewal but only for **Wrongful Acts** allegedly committed before such cancellation or expiry of the **Policy Period**, as applicable. This Extension includes cover for **Legal Representation Expenses** for any such **Retired Director or Officer** in respect of an **Investigation** in respect of conduct occurring before expiry of the **Policy Period**.

3.18 Run Off Cover in respect of Subsidiaries

In the event of the sale, dissolution or disposal of a **Subsidiary** before or after the commencement of the **Policy Period**, ACE will pay:

- (a) **Loss** for any **Wrongful Act** in respect of that **Subsidiary** for a **Wrongful Act** committed prior to the sale, dissolution or disposal of the **Subsidiary**;
- (b) **Legal Representation Expenses** for any **Investigation** in respect of conduct committed before the sale, dissolution or disposal of the **Subsidiary**;
- (c) **Direct Financial Loss** for **Fraudulent Acts** committed prior to the **Change in Exposure** and which is otherwise covered by this **Policy**.



4. Exclusions

4.1 Bodily Injury

ACE will not pay any **Loss** arising from any **Claim** for any bodily injury, sickness, disease, death, condition, emotional distress or nervous shock of any person. This Exclusion does not apply to **Claims** for emotional distress caused by an **Employment Practice Breach**, or **Defence Costs** or **Legal Representation Expenses** under Extension 3.13 (Occupational Health & Safety).

4.2 Dishonesty, Fraud or Personal Profit

ACE will not pay any **Loss** directly or indirectly caused by, arising out of or in any way connected with the conduct of an **Insured** which:

- (a) involves committing or permitting any knowing or wilful breach of duty, contract, law or regulation;
- (b) involves committing or permitting any criminal, fraudulent, dishonest or malicious act or omission;
- (c) gives rise to the **Insured** gaining or attempting to gain any personal profit or advantage to which the **Insured** was not legally entitled.

For the avoidance of doubt, this Exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001* (Cth) applies.

This Exclusion only applies where the conduct in question has been established by admission, court judgment or other final adjudication.

No fact pertaining to, conduct of or knowledge possessed by an **Insured Person** will be imputed to any other **Insured Person** to determine whether this Exclusion applies and only knowledge possessed by and facts known to any past, present or future chairman, director, chief executive officer, chief financial officer or person occupying an equivalent position of the **Insured Organisation** shall be imputed to the **Insured Organisation** to determine if this Exclusion applies.

This Exclusion shall not apply to Insuring Clause 1.6.

4.3 Insured Organisation Versus Insured Person

ACE will not pay any **Loss** arising from any **Claim** brought or maintained by any **Insured Organisation**. This Exclusion does not apply to:

- (a) any **Claim** against an **Insured Person** brought or maintained on behalf of the **Insured Organisation**:
 - (i) by a liquidator, receiver, administrator or similar external administrator, or
 - (ii) as a shareholder derivative action

and that has been brought or maintained without the voluntary intervention, assistance or active participation of any director or **Officer** or of the **Insured Organisation** other than if required by law.

- (b) **Defence Costs** of any **Insured Person**.



4.4 Major Shareholder

ACE will not pay for any **Loss** directly or indirectly caused by, arising out of or in any way connected with any **Claim** brought by or on behalf of any person or entity who owns or controls 15% or more of the issued share capital of the **Insured Organisation** or any **Subsidiary**.

4.5 North America

ACE will not pay for any **Loss** directly or indirectly caused by, arising out of or in any way connected with any **Claim** in a court of law constituted in, or under the laws of, the United States of America or its territories or Canada, or any **Claim** arising out of the activities of the **Insured** or any **Outside Organisation** in the United States of America or its territories or Canada.



4.6 Pollution

ACE will not pay any **Loss** directly or indirectly caused by, arising out of or in any way connected with:

- (a) **Pollutants;**
- (b) any radioactive, toxic, contaminating, explosive or other hazardous properties of nuclear or atomic operation, installation, reactor, assembly, component, device, weapon, material, fuel or waste from the combustion of nuclear fuel.

This Exclusion does not apply to any **Claim** against an **Insured Person** instigated by a shareholder or a group of shareholders of the **Insured Organisation** directly or in the name of the **Insured Organisation** without the express or tacit consent, agreement, concurrence, co-operation, support or encouragement of any **Insured Person**.

4.7 Prior Matters

ACE will not pay any **Loss** directly or indirectly caused by, arising out of or in any way connected with:

- (a) any **Claim** made, threatened or intimated against any **Insured** before the commencement of the **Policy Period;**
- (b) any litigation or other proceedings commenced against the **Insured** before the commencement of the **Policy Period;**
- (c) any fact, circumstance, act, omission or claim disclosed in the **Proposal** or of which notice has been given to any other insurer before the commencement of the **Policy Period;**
- (d) any **Prior Known Fact**.

4.8 Professional Services

ACE will not pay any **Loss** arising from any actual or alleged act, error or omission allegedly committed in connection with the provision of professional services to a third party, including any alleged breach of any contract for the provision of professional services and/or advice to such third party by any **Insured**.

This exclusion does not apply under Insuring Clauses 1.1 and 1.2 to an alleged failure of an **Insured Person** to supervise an **Employee** of the **Insured Organisation** or the conduct of a **Trustee** covered by Insuring Clause 1.4.

4.9 Property Damage

ACE will not pay any **Loss** arising from any **Claim** for damage to or destruction of any tangible property including any claim for loss of use of such property.

4.10 Public Securities Offering

ACE will not pay for any **Loss** directly or indirectly caused by, arising out of or in any way connected with the public sale, offer to sell, purchase or distribution of **Securities** by an **Insured Organisation**.

4.11 Additional Exclusions specific to Insuring Clause 1.4 (Superannuation Trustees Liability)

Only with respect to Insuring Clause 1.4 (Superannuation Trustees Liability) ACE will not pay for any **Loss**:



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- (a) for any **Benefit** under a **Fund** for death, temporary disability (total or partial) to a beneficiary other than **Defence Costs** of the **Trustee**;
- (b) in respect of a failure to collect, pay or maintain any contributions to any **Fund**;
- (c) arising out of the return or repatriation to any employer of any contribution or assets of a **Fund**.



4.12 Additional Exclusions specific to Insuring Clause 1.5 (Insured Organisation Liability)

Only with respect to Insuring Clause 1.5 (Insured Organisation Liability) ACE will not pay for any **Loss**:

- (a) arising from or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce;
- (b) in respect of any misappropriation, plagiarism or infringement of any trade mark, trade secret, patent, copyright or any other intellectual property rights;
- (c) arising from or attributable to any actual or alleged liability of the **Insured Organisation** under any contract, guarantee, warranty or agreement or assumed liability to the extent that the contract or other assumed liability increases the compensation or damages payable beyond the amount payable in tort or under any applicable statute;
- (d) arising out of a violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund;
- (e) in respect of any trading debt of the **Insured Organisation** in conducting its business.

4.13 Exclusions specific to Insuring Clause 1.6 (Employee Crime)

Only with respect to Insuring Clause 1.6 (Employee Crime) ACE will not pay for:

- (a) any **Direct Financial Loss** the proof of which is solely dependent on a profit and loss computation, or on a comparison of inventory records with an actual physical count, PROVIDED THAT where the **Direct Financial Loss** results from or is suspected of resulting from an identified **Employee**, a comparison of inventory records with an actual physical count can be relied on as partial evidence in support of the **Direct Financial Loss** claimed;
- (b) any **Direct Financial Loss** arising from any **Fraudulent Act** involving any person who owns or controls more than 5% of the issued share capital of the **Insured Organisation**;
- (c) any **Direct Financial Loss** arising from the accessing and dissemination of any confidential information, including but not limited to patents, trade marks, copyrights, customer information, computer programs and trade secrets;
- (d) any **Direct Financial Loss** arising from any **Fraudulent Act** committed after any director or **Officer** has become aware of a previous **Fraudulent Act** PROVIDED THAT this Exclusion shall not apply if the director or **Officer** who discovers such act(s) is in collusion with the **Employee**;
- (e) consequential loss of any nature, including but not limited to loss of income and to interest or dividends not realised or received by the **Insured Organisation** or by any other person(s) or organisation(s) because of **Direct Financial Loss** covered under Insuring Clause 1.6;
- (f) any **Direct Financial Loss** arising from any **Fraudulent Act** committed by any member of the board or directors of the **Insured Organisation**, whether acting alone or in collusion with others;
- (g) any **Direct Financial Loss** arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like unless the **Direct Financial Loss** is a result of **Fraudulent Act** which results in the **Employee** making an improper



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financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;

- (h) any **Direct Financial Loss** arising from any extortion or kidnap and ransom;
- (i) any **Direct Financial Loss** arising from:
 - (i) any **Fraudulent Act** committed by an **Employee** who prepares cheque requisitions that also has cheque signing authority;
 - (ii) any cheques over \$10,000 that are not countersigned;
 - (iii) any **Fraudulent Act** committed by an **Employee** who reconciles monthly bank statements who also handle deposits, or has access to cheque signing machines, or signature plates or has cheque signatory authority.

4.14 Additional Exclusions specific to Extension 3.14 (Outside Directorship Cover)

Only with respect to Extension 3.14 (Outside Directorship Cover) ACE will not pay:

- (a) for any **Loss** that is insured under any other policy entered into by the **Insured**, whether prior or current;
- (b) for any **Loss** that is insured under any other policy effected by or on behalf of the **Outside Organisation** or **Insured Person** or under which the **Insured Person** is a beneficiary (but not a policy to which 4.14(a) above applies), whether prior or current;
- (c) for any **Loss** in connection with any **Claim** against an **Insured Person** in relation to which the **Outside Organisation** is required or permitted to indemnify the **Insured Person**;
- (d) any **Loss** in connection with any **Claim** made by or on behalf of any **Insured Person**, the **Outside Organisation** or any director, **Officer** or employee of the **Outside Organisation**, or any individual or entity or affiliated group of individuals and/or entities who directly or beneficially owns or controls 15% or more of the issued and outstanding capital, equity or loan stock of the **Outside Organisation** or voting rights representing the present right to vote in the election of directors of the **Outside Organisation**, except in respect of any **Claim** that is a derivative action brought or maintained in the name of an **Outside Organisation** by any legally authorised individual or entity, provided the action is not brought or maintained with the express or tacit consent, agreement, concurrence, co-operation, support or encouragement of any **Insured Person**, the **Outside Organisation** or any directors, **Officers** or employees of the **Outside Organisation**, other than as required by law;
- (e) any **Loss** directly or indirectly caused by, arising out of or in any way connected with:
 - (i) any **Claim** made, threatened or intimated against any **Insured Person** before the effective date of commencement of the relevant **Outside Directorship**;
 - (ii) any litigation or other proceedings commenced against an **Insured Person** or any **Outside Organisation** before the effective date of commencement of the relevant **Outside Directorship**;



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- (iii) any fact, circumstance, act, omission or claim disclosed in the **Proposal** or of which notice has been given to any other insurer on or before the effective date of commencement of the relevant **Outside Directorship**;
- (iv) any fact, circumstance, act or omission which the **Insured Person** is aware prior to the effective date of commencement of the relevant **Outside Directorship** might give rise to an allegation of a **Wrongful Act** or which at such date the **Insured Person** knew, or ought reasonably have been aware, might give rise to a **Claim**.

5. Conditions

5.1 Allocation of Loss

- (a) Fair and Equitable Allocation of Loss

ACE' s liability under this **Policy** is limited to the proportion of **Loss** which is a fair and equitable allocation:

- (i) between the **Insured** covered by the **Policy** in respect of the **Claim** and any other persons or entity (including any **Insured** not covered in respect of the **Claim**) where the **Loss** has been jointly or jointly and severally incurred by them. The parties shall have regard to the relative legal and financial exposures of, and relative benefits obtained by, the covered **Insured** and those other persons or entities; and/or
- (ii) between the **Insured** and ACE, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where ACE and the **Insured** are unable to agree upon a fair and equitable allocation then such allocation will be determined by Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Law Society, or equivalent organisation, for the State or Territory out of which the **Policy** was issued). Counsel' s determination will be binding on ACE and the **Insured** as to the fair and equitable allocation. The costs of obtaining this opinion will be treated as **Defence Costs**.

- (b) Advancement of Defence Costs

Notwithstanding clause 5.1(a), if no fair and equitable allocation has been agreed or determined in respect of any **Claim**, ACE will advance **Defence Costs** (subject to the **Deductible**) in the proportion which it contends should be allocated to **Loss** in accordance with clause 5.1(a).

Any such fair and equitable allocation negotiated or determined will be applied retrospectively to all **Defence Costs** incurred prior to the date of such negotiation or determination.

5.2 Basis of Valuation

With respect to Insuring Clause 1.6, ACE shall not be liable to make payment for more than:

- (a) the actual market value of **Securities** at the close of business on the day of discovery of the **Direct Financial Loss**, or for more than the actual cost of replacing the **Securities**, whichever is the less,



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plus the cost to post any required lost instrument bond, which cost will be paid by ACE on behalf of the **Insured Organisation**;

- (b) the actual cash value of other property at the time the **Direct Financial Loss** is sustained or the actual cost of replacing the property with property or material of like quality or value, whichever is the less. The actual cash value of other property if held by the **Insured Organisation** as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of the property as determined and recorded by the **Insured Organisation** when making the advance or loan or, in the absence of a record, the unpaid portion of the advance or loan plus accrued interest at commercial rates.

5.3 Cancellation

The **Insured** may cancel this **Policy** by providing written notice to ACE. ACE shall retain the pro-rata proportion of the premium plus 15% of the unearned **Premium**. ACE may only cancel this **Policy** as permitted by law and shall be entitled to retain the pro-rata proportion of the **Premium**.

5.4 Conduct of Proceedings

- (a) It is the duty of the **Insured**, not ACE, to defend any **Claim** notified under this **Policy**. With respect to Extension 3.9 (Legal Representation Expenses), it is also the duty of the **Insured**, not ACE, to arrange representation at an **Investigation** covered by this **Policy**. ACE however, will have the right to effectively associate with any **Insured** in respect of any **Claim** or **Investigation**.
- (b) ACE will accept as reasonable and necessary the retention of separate legal representation to the extent required by a material conflict of interest between any **Insured**.
- (c) If a covered **Claim** is made against an **Insured** by another **Insured**, ACE shall have no duty or obligation to communicate with any **Insured** other than the **Insured** against whom or which the **Claim** is made.
- (d) The **Insured** agrees to do nothing which will or might prejudice ACE in respect of a **Claim** or **Loss** covered by this **Policy**.
- (e) The **Insured** must not make any admission of liability in respect of, or agree to settle, any **Claim** or incur any **Loss**, including any **Defence Costs** or **Legal Representation Expenses**, without the prior written consent of ACE (which shall not be unreasonably delayed or withheld), and ACE must be consulted in advance of investigation, defence and settlement of any **Claim**.
- (f) The **Insured** must, at their own expense, give ACE and any investigators or legal representatives appointed by ACE all information they reasonably require, and full co-operation and assistance in the conduct of the investigation (including for the purpose of enabling ACE to determine its liability to provide indemnity under this **Policy**), defence, settlement, avoidance or reduction of any actual or possible **Loss**, **Claim** or **Investigation**.

5.5 Confidentiality



Elite Management Liability

The **Insured** must not disclose the terms, the nature or the **Limit of Liability** or the **Premium** payable under this **Policy**, to any third party, including disclosure in the **Insured Organisation'** s annual report, except where:

- (a) ACE provides written consent; or
- (b) disclosure is required by law.



5.6 Disputes as to Defence & Settlement of Claims

- (a) Where a dispute arises between ACE and the **Insured** as to whether a **Claim** should be settled or a judgment or determination appealed, ACE will be entitled to brief Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Law Society, or equivalent organisation, for the State or Territory out of which the **Policy** was issued) to advise on whether or not the **Claim** should be contested, and if not, on the amount for which the **Claim** should be settled or whether a judgment or determination should be appealed. In providing such advice and in making any recommendation as to settlement, Counsel is entitled to take into account both legal and commercial considerations. Counsel must have regard to the damages and costs that are likely to be recovered, the **Defence Costs** that will be incurred in contesting the **Claim** and the prospects of the **Claim** being successfully defended. The **Insured** will not be required to contest the **Claim** unless Counsel recommends that, having regard to all the circumstances, the **Claim** should be contested.
- (b) The costs of obtaining this recommendation will be treated by ACE as part of the **Defence Costs**.
- (c) If Counsel recommends that having regard to all the circumstances, settlement of the **Claim** should be attempted, then subject to receiving the **Insured's** consent (not to be unreasonably withheld), ACE will attempt settlement of the **Claim** in accordance with Counsel's recommendation. Where settlement is attempted in accordance with Counsel's recommendation but is unsuccessful, ACE will continue to indemnify the **Insured** subject to the terms, conditions, exclusions and limitations of this **Policy**.
- (d) Notwithstanding the preceding provisions of this clause 5.6, if any **Insured** does not consent to any settlement of a **Claim** recommended by Counsel, the liability of ACE is limited to the amount for which, at the time of the **Insured's** refusal, ACE could have settled the **Claim** and **Defence Costs** incurred to that point. Notwithstanding any advice from such Counsel, ACE shall be entitled, if it elects to do so in its absolute discretion, to continue to defend such **Claim**, other than under Insuring Clauses 1.1 and 1.2.

5.7 Goods and Services Tax

Where ACE makes payment under this **Policy**:

- (a) the amount of the payment will be reduced by the amount of any input tax credit to which the **Insured** is or may, in the opinion of ACE, be entitled to claim; and
- (b) the **Insured** must inform ACE of the extent of any entitlement to an input tax credit for the **Premium** at or before the time a claim is made under this **Policy**.

If the **Insured** makes a claim under this **Policy**, it must inform ACE of its Australian Business Number if it has one.

The amount of the applicable **Deductible** is calculated after deduction of the amount of any input tax credit that the **Insured** is or may, in the opinion of ACE, be entitled to claim.

5.8 Governing Law



This **Policy** is governed by and is to be interpreted in accordance with the laws of the Commonwealth of Australia and of the State or Territory of the office of ACE in which the **Policy** was issued. The courts of that State or Territory have exclusive jurisdiction in relation to any disputes regarding the interpretation of this **Policy**.

5.9 Interpretation

In this **Policy**, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are merely descriptive and not to aid interpretation;
- (c) bolded words used in this **Policy** have the meanings set out in Section 2 and in the Schedule.



5.10 Limit of Liability

Other than with respect to Extension 3.1 (Additional Excess Limit for Non Executive Directors), the total aggregate amount payable by ACE under the **Policy** in respect of all **Loss, Crisis Costs, Direct Financial Loss** and **Crime Costs** irrespective of the number, timing or amount of **Claims, Investigations** or **Fraudulent Acts** or the number of **Insureds** who claim, will not exceed the **Limit of Liability**. The **Limit of Liability** is not increased or reinstated when the **Non Renewal Discovery Periods, Discovery Period following a Change in Exposure**, if purchased, or **Retired Directors and Officers** cover is in operation. Any cover under those Extensions, and all sub-limits, are part of and not in addition to the **Limit of Liability**.

5.11 Multiple Claims and Fraudulent Acts

Two or more **Claims** arising out of a **Wrongful Act** or a series of related **Wrongful Acts** will be treated as a single **Claim**. All such **Claims** will be treated as if first made at the time the earliest **Claim** was made. Any such **Claims** will be treated as a single **Claim** for the purpose of applying the **Limit of Liability** and **Deductible**.

For the purpose of Insuring Clause 1.6 a series of continuous, repeated or related **Fraudulent Acts** up to the time of discovery by the **Insured** shall be treated as a single **Fraudulent Act**.

5.12 Notification

(a) Notification of **Claims**

The **Insured** must, as soon as practicable, give written notice to ACE of any **Claim** first made during the **Policy Period** or **Discovery Period** but prior to the expiration or termination of this **Policy**.

(b) Notification of **Direct Financial Loss**

The **Insured** must, within 30 days after discovery but prior to expiration or termination of this **Policy** by any director or **Officer** of the **Insured**, not in collusion with the **Employee** who committed the **Fraudulent Act**, give written notice to ACE of any **Direct Financial Loss** first discovered during the **Policy Period**, with full particulars as may be required by ACE.

(c) Notifications to be in writing

All notifications under this **Policy** must be provided to ACE in writing and addressed as follows:

The Financial Lines Claims Manager
ACE Insurance Limited
28-34 O' Connell Street
SYDNEY NSW 2000 Australia

(d) Notifications must include certain information



All notifications under this **Policy** must include (as applicable) the following information:

- (i) a specific description of the alleged **Wrongful Act**, **Fraudulent Act** or other conduct or event;
- (ii) details of all parties involved;
- (iii) a copy of any **Claim** or **Investigation**;
- (iv) any details of actual or suspected **Direct Financial Loss**;
- (v) relevant information for any **Crisis Costs**;
- (vi) such other information as ACE may require.

5.13 Presumptive Indemnification

For the purpose of Insuring Clause 1.2, in the event and to the extent the **Insured Organisation** is permitted or legally obligated to pay an **Insured Person** by way of indemnification as a result of any **Claim** and fails or refuses to do so for any reason, ACE will pay on behalf of the **Insured Person** such **Loss**, subject to payment of the **Deductible** specified in Item 10(b) of the Schedule by the **Insured Organisation**. However, the **Deductible** will not be payable if the **Insured Organisation** is unable to pay the amount of the **Deductible** due to insolvency. Bankruptcy or insolvency of an **Insured Organisation** or of the estate of any **Insured Person** will not relieve ACE of its obligations nor deprive ACE of its rights or defences under this **Policy**.

5.14 Proposal Form Disclosure & Severability

In granting cover under this **Policy**, ACE has relied upon the **Proposal**.

The **Proposal** will be construed as a separate proposal by each of the **Insured**. With respect to statements made and particulars provided in the **Proposal**, no such statements or particulars, and no information possessed by any **Insured**, shall be imputed to any other **Insured** to determine whether cover is available for any **Claim** against the other **Insured** other than for Exclusion 4.7 (c).

Only knowledge possessed by and facts known to any past, present or future chairman, director, chief executive officer, chief financial officer or person occupying an equivalent position of the **Insured Organisation** shall be imputed to the **Insured Organisation**.

5.15 Subrogation

If any payment is made by ACE under this **Policy**, ACE will be subrogated to all rights of indemnity, contribution or recovery of the **Insured** in relation to that payment. The **Insured** must provide ACE with all reasonable assistance and co-operation at their own expense in securing and enforcing such rights. Neither the **Insured Organisation** nor any **Insured Person** may surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior written consent of ACE.

5.16 Waiver of Contribution or Indemnity Rights

ACE will not pay any **Loss** to the extent that it has been caused or contributed to by the **Insured** giving up any right of contribution or indemnity without the prior written consent of ACE.

5.17 Territorial Coverage



Elite Management Liability

Subject to its terms, this **Policy** covers:

- (a) **Wrongful Acts** committed anywhere in the world excluding United States of America or its territories or Canada;
- (b) **Fraudulent Acts** committed in Australia and New Zealand.



ACE Insurance Limited

Privacy Statement

ACE Insurance Limited (ACE) is committed to protecting your privacy. ACE collects, uses and retains your personal information in accordance with the National Privacy Principles. Our detailed privacy policy is available on our website at www.aceinsurance.com.au.

ACE collects your personal information (which may include health information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim. We collect the information to assess your application for insurance, to provide you or your organisation with competitive insurance products and services and administer them and to handle any claim that may be made under a policy. If you do not provide us with this information, we may not be able to provide you or your organisation with insurance or to respond to any claim.

We may disclose the information we collect to third parties, including contractors and contracted service providers engaged by us to deliver our services or carry out certain business activities on our behalf (such as assessors and call centres), other companies in the ACE group, other insurers, our reinsurers, and government agencies (where we are required to by law). These third parties may be located outside Australia.

You agree to us using and disclosing your personal information as set out above. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer.

From time to time, we may use your personal information to send you offers or information regarding our products that may be of interest to you. If you do not wish to receive such information, please contact our Privacy Officer using the contact details provided below.

If you would like to access a copy of your personal information, or to correct or update your personal information, please contact our customer relations team on 1800 815 675 or email customer.relations@acegroup.com.

If you have a complaint or want more information about how ACE is managing your personal information, please contact the Privacy Officer, ACE Insurance Limited, GPO Box 4907, Sydney NSW 2001, Tel: +61 2 9335 3200 or email privacy.aus@acegroup.com.