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ACE Insurance Limited

ELITE PROFESSIONAL INDEMNITY **INSURANCE POLICY**

FIRM: [insert the Firm's name]

POLICY NUMBER: [insert policy number]



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SCHEDULE

- Item 1. Policy No:
- Item 2. Firm:
Principal Address:
- Item 3. Business:
- Item 4. Period of Insurance: From: at 4.00 pm AEST
To: at 4.00 pm AEST
- Item 5. Limit of Liability: each Claim and in the aggregate
- Item 6. Sub Limits of Liability:
 - (a) Bodily Injury & Property Damage (Optional Extension 4.2) each Claim and in the aggregate
 - (b) Fidelity (Optional Extension 4.3) each Claim and in the aggregate
- Item 7. Excess: each and every Claim
- Item 8. Fidelity Excess: each and every dishonest or fraudulent act or omission
- Item 9. Retroactive Date: excluding known Claims or Circumstances
- Item 10. Date of Continuous Cover: excluding known Claims or Circumstances
- Item 11. Joint Venture:
- Item 12. (a) Previous Business:
(b) Previous Business Retroactive Date:
- Item 13. Optional Extensions:

4.1 Automatic Reinstatement of Limit	Covered / Not Covered
4.2 Bodily Injury & Property Damage	Covered / Not Covered
4.3 Fidelity	Covered / Not Covered
4.4 Joint Venture Liability	Covered / Not Covered
4.5 Principal's Previous Business	Covered / Not covered
- Item 14. Premium:



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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 CLAUSE

1.1 Cover

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty by the **Insured** in the conduct of the **Business**, provided that such **Claim**:

- (a) is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**.

2. LIMITATION OF LIABILITY AND EXCESS

2.1 Limit of Liability

- (a) Subject to any **Sub Limit of Liability**, the limit of **ACE's** liability for **Loss** including **Defence Costs** arising from any one **Claim** is the sum specified in Item 5 of the **Schedule**.
- (b) The limit of **ACE's** liability in the aggregate for:
 - (i) **Loss** including **Defence Costs** arising from all **Claims**; and
 - (ii) all claims by the **Insured** against **ACE** under Automatic Extension 3.8 (Loss of Documents) and Optional Extension 4.3 (Fidelity),is the sum specified in Item 5 of the **Schedule**.

2.2 Excess

Subject to the **Excess** specifically applying to Optional Extension 4.3 (Fidelity) and any endorsement to this **Policy**, the **Insured** shall bear the first amount of each and every **Loss** including **Defence Costs** arising from any one **Claim**, up to the amount specified in Item 7 of the **Schedule** as the **Excess**.

2.3 Multiple Claims and Related Conduct

For the purposes of determining the limit of liability available and the **Excess** applicable to **Claims** under this **Policy**, all **Claims** arising from:

- (a) one act, error or omission; or
 - (b) acts, errors or omissions which are the same or related to each other,
- shall be regarded as one **Claim**.



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3. AUTOMATIC EXTENSIONS

Each of the following Extensions automatically apply unless otherwise stated in an endorsement. Each of the Extensions is subject to the **Schedule**, the **Excess**, the Insuring Clause, the Exclusions, the Definitions and other terms of this **Policy** unless otherwise stated in this Section 3. None of these Extensions increase the limit of liability specified in Clause 2.1 of the **Policy**.

3.1 Attendance at Enquiry

ACE shall also pay on behalf of the **Insured** all reasonable legal costs and expenses for the **Insured's** representation at any official enquiry, investigation or examination, including an enquiry under the disciplinary rules of a professional association, which has a direct relevance to any matter which is likely to be the subject of a **Claim** under this **Policy**, provided that:

- (a) the enquiry investigation or examination is commenced during the **Period of Insurance**; and
- (b) such legal costs and expenses are incurred with the written consent of **ACE**; and
- (c) **ACE** shall be entitled, at its sole discretion, to appoint legal representation to represent the **Insured** in the enquiry, investigation or examination; and
- (d) this Extension 3.1 does not cover wages, salaries or other remuneration of the **Insured**; and
- (e) this Extension 3.1 does not cover any fines, penalties (including civil penalties) or any order for the payment of monetary compensation; and
- (f) such payments of legal costs and expenses by **ACE** shall be repaid to **ACE** in the event that the **Insured** shall not be entitled to payment of any **Loss** or receipt of any benefit under this **Policy**; and
- (g) the aggregate liability of **ACE** in respect of legal costs and expenses covered under this Extension 3.1 shall not exceed \$50,000.

3.2 Consultants, Contractors, Subcontractors and Agents

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty committed by any consultant, contractor, subcontractor or agent of the **Insured** for whose breach the **Insured** is legally liable, provided that such **Claim**:

- (a) is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission committed on behalf of the **Insured** occurring on or after the **Retroactive Date**.

This Extension 3.2 neither affords coverage to any consultant, contractor, subcontractor or agent of the **Insured** nor makes any such person or entity an **Insured**.

3.3 Continuous Cover

Notwithstanding Exclusion 5.13 (Prior Matters), **ACE** will pay for **Loss** arising from any **Claim** both first made against the **Insured** and notified to **ACE** during the **Period of Insurance** arising from a **Prior Known Fact**, provided that:

- (a) the **Claim** would be covered under this **Policy** but for the operation of Exclusion 5.13 (Prior Matters); and
- (b) the **Insured** has maintained with **ACE** and without interruption, professional indemnity insurance from the **Date of Continuous Cover** as specified in Item 10 of the **Schedule** up until the date this **Policy** commenced; and



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- (c) the **Insured** would have been indemnified under the professional indemnity liability insurance policy in force at the relevant time if the **Prior Known Fact** had been notified to **ACE** when the **Insured** first became aware of it; and
- (d) neither the **Claim** nor the **Prior Known Fact** has been notified under any other policy; and
- (e) there has been no fraudulent non disclosure or fraudulent misrepresentation in respect of such **Prior Known Fact**; and
- (f) cover under this Extension 3.3 will be in accordance with the terms, conditions, exclusions and limitations (including the **Schedule**, the **Excess**, the Insuring clause, the Exclusions, the Definitions and the limits and **Sub Limits of liability**) of the **ACE Policy** in force at the time the **Insured** first became aware of, or should reasonably have become aware of the **Prior Known Fact**.

3.4 Defamation

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for libel or slander by the **Insured** in the conduct of the **Business**, provided that:

- (a) such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) such **Claim** arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (c) the **Insured** did not intend to publish the libel or slander with express malice.

3.5 Estates and Legal Representatives

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty by the **Insured** in the conduct of the **Business** which is made against the estates, heirs or legal representatives of any deceased or legally incapacitated **Principal** or **Employee**, provided that the **Claim**:

- (a) is made solely by reason of their status as estates, heirs or legal representatives of the deceased or legally incapacitated **Principal** or **Employee**; and
- (b) is first made against such estates, heirs or legal representatives during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (c) arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**.

3.6 Fraud & Dishonesty

Notwithstanding Exclusion 5.5 (Fraud, Dishonesty, & Reckless Conduct) of the **Policy**, **ACE** shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** against the **Insured** for civil liability the result of a dishonest, fraudulent, malicious or criminal act or omission of any **Principal** (other than a sole practitioner) or **Employee** of the **Firm** in the conduct of the **Business**, provided that:

- (a) such **Claim**:
 - (i) is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
 - (ii) arises from a dishonest, fraudulent, malicious or criminal act or omission of the **Principal** or **Employee** occurring on or after the **Retroactive Date**;
- (b) coverage under this Extension 3.6 shall not be provided:
 - (i) to any **Insured** committing, participating in or condoning such dishonest, fraudulent, malicious or criminal act or omission; or
 - (ii) for any **Loss of Money**.



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3.7 Intellectual Property Infringement

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** in respect of civil liability for unintentional breach of any intellectual property right (including copyright, trademark, registered design, plagiarism, breach of confidentiality, disclosure of confidential information) except patent right by the **Insured** in connection with the **Business**, provided that:

- (a) such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) such **Claim** arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**.

3.8 Loss of Documents

Notwithstanding Exclusion 5.2 (Bodily Injury & Property Damage), **ACE** shall pay on behalf of the **Insured** the reasonable and necessary costs, charges and expenses in replacing or restoring **Documents** for which the **Insured** is legally responsible in the conduct of the **Business** and which have been destroyed, damaged or lost and cannot be found after diligent search, provided that:

- (a) the loss of, damage to or destruction of such **Documents** was:
 - (i) sustained and first discovered by the **Insured** during the **Period of Insurance**; and
 - (ii) reported to **ACE** during the **Period of Insurance**; and
- (b) the claim for such costs, charges and expenses is supported by satisfactory proof of loss (including bills and accounts) which shall be subject to approval by a competent person nominated by **ACE** with the **Insured's** approval; and
- (c) this Extension 3.8 shall not provide coverage for any costs, charges or expenses directly or indirectly relating to:
 - (i) destroyed, damaged or lost **Electronic Data**;
 - (ii) any **Documents** which have been destroyed, damaged or lost as a result of wear, tear or other gradually operating causes; and
- (d) if the **Insured** has other valid insurance for recovery of the costs, charges or expenses covered by this Extension 3.8, then to the extent permitted by the Insurance Contracts Act 1984, the cover afforded by this Extension 3.8 shall be excess over such other insurance.
- (e) the aggregate liability of **ACE** in respect of all losses covered under this Extension shall not exceed \$500,000.

3.9 Newly Acquired or Created Subsidiaries

- (a) **ACE** agrees to extend the definition of the **Insured** (clause 8.17) to automatically include any **Subsidiary** which is acquired or created by the **Firm** during the **Period of Insurance** for a period of up to twenty one (21) days (but never beyond the **Period of Insurance**) from the date of acquisition or creation of the **Subsidiary** by the **Firm**, provided that:
 - (i) the **Subsidiary** has total gross assets which are less than 20% of the total gross assets of the **Firm**; and
 - (ii) the **Subsidiary** is not incorporated outside Australia or New Zealand; and
 - (iii) the **Subsidiary** does not undertake any business or activities in the USA or Canada; and
 - (iv) this Extension 3.9 will only apply in respect of **Claims** arising from an act, error or omission occurring after the date of acquisition or creation of the **Subsidiary** by the **Firm**.



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- (b) this Extension 3.9 does not in any way obligate **ACE** to offer cover to such **Subsidiary** beyond the period referred to in clause 3.9 (a), and **ACE** may do so on such terms and conditions and at such premium as it may decide in its absolute discretion.

3.10 Run Off Cover for Insured Entity

In the event that an **Insured** entity is merged into or acquired by another entity or otherwise ceases to exist or operate during the **Period of Insurance**, the coverage provided under the **Policy** for such **Insured** entity shall continue until the end of the **Period of Insurance**, provided that such coverage shall only apply in respect of a **Claim** that:

- (a) is first made against the **Insured** entity during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission by the **Insured** entity occurring between:
 - (i) the **Retroactive Date**; and
 - (ii) the date the **Insured** entity ceased to exist or operate or was merged into or acquired by another entity.

3.11 Trade Practices Act

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty committed by the **Insured** in the conduct of the **Business** under the Trade Practices Act 1974 (Cth) or any Fair Trading Acts enacted by the States or Territories of Australia, provided that such Claim:

- (a) is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (c) does not involve any liability under the penal or criminal provisions of those Acts.

4. OPTIONAL EXTENSIONS

Each of the following Extensions apply only if the Extension is shown to be included in the **Schedule**. Each of the Extensions is subject to the **Schedule**, the **Excess**, the Insuring Clause, the Exclusions, the Definitions and other terms of this **Policy** unless otherwise stated in this Section 4. None of these Extensions increase the limit of liability specified in Clause 2.1 of the **Policy**.

4.1 Automatic Reinstatement of Limit of Liability

In the event that the limit of liability, shown in Item 5 of the **Schedule** and referred to in Clause 2.1 of the **Policy**, is exhausted, such limit of liability will be automatically reinstated once during the **Period of Insurance** subject to the following:

- (a) such reinstatement is limited in total to an amount equal to the limit of liability shown in Item 5 of the **Schedule**; and
- (b) such reinstatement will only apply after the total aggregate limit of liability available under the **Policy** is exhausted; and
- (c) notwithstanding such reinstatement, the **Policy** is subject to the limit of liability as set out in Item 5 of the **Schedule**, at all times.



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4.2 Bodily Injury & Property Damage

Notwithstanding Exclusion 5.2 (Bodily Injury & Property Damage), **ACE** shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** against the **Insured** for civil liability the result of a breach of professional duty arising from the death or bodily injury of any person or any damage to or destruction or physical loss of property, provided that:

- (a) such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (c) the aggregate liability of **ACE** in respect of all **Claims** for **Bodily Injury** and property damage under this Optional Extension 4.2 shall not exceed the **Sub Limit of Liability** for this Optional Extension 4.2 shown in Item 6 of the **Schedule**.

4.3 Fidelity

Notwithstanding Exclusion 5.5 (Fraud, Dishonesty & Reckless Conduct) and 5.9 (Loss of Money) of the **Policy**, **ACE** shall pay on behalf of the **Insured** any **Loss of Money** sustained as a result of any dishonest or fraudulent act or omission of an **Employee** committed in the **Business**, provided that:

- (a) such **Loss of Money** is first discovered during the **Period of Insurance** and reported to **ACE** within twenty eight (28) days of such discovery but before expiry of the **Period of Insurance**; and
- (b) **ACE** shall not be liable to make any payment for **Loss of Money**:
 - (i) sustained in connection with any act or omission occurring:
 - (A) after the first date of discovery of the dishonesty or fraud on the part of the **Employee** concerned; or
 - (B) after the date on which any **Insured** had reasonable cause for suspicion of dishonesty or fraud on the part of the **Employee** concerned; or
 - (ii) to any **Insured** who committed, participated in or condoned any dishonest or fraudulent conduct which caused or contributed to such **Loss of Money**; and
- (c) if the **Insured** has other valid insurance for **Loss of Money** covered under this Optional Extension 4.3, then to the extent permitted by the Insurance Contracts Act (Cth), 1984 the cover afforded by this Optional Extension 4.3 shall be excess over such other insurance; and
- (d) the **Insured** shall bear the cost of supplying satisfactory proof to substantiate any **Loss of Money** including all legal, investigative and accounting costs incurred in such process; and
- (e) the amount of any payment by **ACE** under this Optional Extension 4.3 shall be reduced by the amount of any moneys (including wages, dividends, outstanding loans and equity) which are payable by the **Insured** to the **Employee** concerned or which, but for the **Employee's** dishonesty or fraud would have been payable by the **Insured** to that **Employee**; and
- (f) the aggregate liability of **ACE** in respect of all claims for **Loss of Money** under this Optional Extension 4.3 shall not exceed the **Sub Limit of Liability** for this Optional Extension 4.3 shown in Item 6(b) of the **Schedule**; and
- (g) The **Insured** shall bear the amount specified in Item 8 of the **Schedule** in respect of each and every dishonest or fraudulent act or omission as its excess under this Optional Extension 4.3.



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4.4 Joint Venture Liability

Notwithstanding Exclusion 5.7 (Joint Ventures), **ACE** shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** against the **Insured** for civil liability the result of a breach of professional duty committed by the **Insured** in the **Business** as a participant in a **Joint Venture** specified in Item 11 of the **Schedule**, provided that:

- (a) such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) such **Claim** arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (c) any indemnity afforded under this Optional Extension 4.4 shall be limited to the **Insured's** proportion of any liability incurred by such **Joint Ventures**.

This Optional Extension 4.4 neither affords coverage to any person or entity with whom the **Insured** is in **Joint Venture** nor makes any such person or entity an **Insured**.

4.5 Principal's Previous Business

ACE shall pay on behalf of any person who is, was or becomes a **Principal** during the **Period of Insurance** any **Loss** arising from a **Claim** for civil liability the result of a breach of professional duty in the same profession as the **Business**, which is incurred on the part of such person in the conduct of any of the **Previous Businesses**, provided that such **Claim**:

- (a) is first made against that **Principal** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
- (b) arises from an act, error or omission of that **Principal** occurring on or after the date specified in Item 12 (b) of the **Schedule**.



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5. EXCLUSIONS

ACE shall not be liable to provide indemnity in respect of any **Claim**:

5.1 Assumed Liabilities & Duties

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any warranty, guarantee, indemnity or other contractual undertaking or obligation to the extent that:
 - (i) it extends a duty of any **Insured** beyond exercising the standard of care and skill reasonably to be expected in the circumstances; or
 - (ii) it increases the **Insured's** liability beyond the amount that would have been payable in the absence of such warranty, guarantee, indemnity or other contractual undertaking or obligation;
- (b) any **Insured** having foregone, excluded or limited a right of recovery.

5.2 Bodily Injury & Property Damage

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any **Bodily Injury**; or
- (b) any damage to or destruction of property (including the loss of use of property).

5.3 Directors & Officers and Prospectus Liability

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any alleged or actual breach by an **Insured** of a duty owed in the capacity of a director, secretary or officer of a body corporate; or
- (b) the issue by an **Insured** of any prospectus or any other form of public offering.

5.4 Financial Failure & Trading Debts

directly or indirectly caused by, arising out of or in any way connected with:

- (a) the insolvency, bankruptcy or liquidation of an **Insured**; or
- (b) any alleged or actual failure to pay any trading or personal debt of an **Insured**; or
- (c) any guarantee warranty, or other undertaking or obligation given by an **Insured** for a debt.

5.5 Fraud, Dishonesty & Reckless Conduct

directly or indirectly caused by, arising out of or in any way connected with any **Insured** committing or condoning or allegedly committing or condoning any:

- (a) dishonest, fraudulent, malicious or criminal act or omission; or
- (b) wilful or intentional breach of any right, statute, contract or duty; or
- (c) conduct with reckless disregard for the consequences of such conduct.

5.6 Genetically Modified Organisms

directly or indirectly caused by, arising out of or in any way connected with any **Genetically Modified Organism**.

5.7 Joint Ventures

directly or indirectly caused by, arising out of or in any way connected with any activities in which an **Insured** engages as a participant in a **Joint Venture**.



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5.8 Jurisdictional & Geographical Limits

directly or indirectly caused by arising out of or in any way connected with:

- (a) any act or omission which occurred in the USA or Canada; or
- (b) any **Claim**:
 - (i) involving the application of the law of any country other than Australia or New Zealand; or
 - (ii) for determination by a Court of law within a country other than Australia or New Zealand; or
 - (iii) arising out of the enforcement of any judgment, order or award made under the law of any country other than Australia or New Zealand.

5.9 Loss of Money

directly or indirectly caused by, arising out of or in any way connected with any **Loss of Money**.

5.10 Obligations to Employees

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any **Bodily Injury** of any **Employee**;
- (b) any damage to or destruction of property of any **Employee**, including loss of use of property; or
- (c) any breach of any obligation owed to any **Employee**; or
- (d) arising out of or in the course of that **Employee's** employment by the **Insured** ; or
- (e) any liability in respect of which the **Insured** is or would be entitled under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected.

5.11 Occupier's Liabilities

directly or indirectly caused by, arising out of or in any way connected with the ownership or occupation of any real property by an **Insured**.

5.12 Pollution, Asbestos & Radioactivity

directly or indirectly caused by, arising out of or in any way connected with:

- (a) the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **Pollutants** into or upon the land, atmosphere or any watercourse or body of water; or
- (b) the cost of preventing, monitoring, removing, containing, treating, detoxifying, neutralising, nullifying or cleaning up of **Pollutants**; or
- (c) any radioactive, toxic, contaminating, explosive or other hazardous properties of any nuclear or atomic operation, installation, reactor, assembly, component, device, weapon, material, fuel or waste from the combustion of nuclear fuel; or
- (d) asbestos in whatever form or quantity.

5.13 Prior Matters

directly or indirectly caused by, arising out of or in any way connected with any:

- (a) **Claim** first made prior to the **Period of Insurance**;
- (b) **Claim** or **Circumstances** notified, in whole or part, to **ACE** or any other insurer prior to the **Period of Insurance**; or



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- (c) **Claim** or **Circumstances** of which the **Insured** was aware or ought reasonably to have been aware, prior to the **Period of Insurance**.

5.14 Products Liability

directly or indirectly caused by, arising out of or in any way connected with any goods manufactured, distributed, supplied, installed, treated, assembled or processed by or on behalf of any **Insured**.

5.15 Related Persons and Entities

brought or maintained by or on behalf of:

- (a) any **Insured**, **Subsidiary**, or parent of any **Insured**;
- (b) any entity within the same group of companies as the **Insured**;
- (c) any person who, at the time of the act, error or omission giving rise to the **Claim** is a **Relative** of any **Insured**;
- (d) any entity operated or controlled by any **Insured** or **Relative** of the **Insured**, or
- (e) any entity in which an **Insured** has a **Financial Interest**.

5.16 War & Terrorism

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition or destruction of property by or under the order of any government or public authority; or
- (b) any **Act of Terrorism**.

6. GENERAL CONDITIONS

6.1 Alteration to Risk

The **Insured** must give **ACE** written notice as soon as is reasonably practicable after becoming aware of any actual or proposed alteration affecting **ACE's** risk under this **Policy** including any material change in the nature of the professional services provided by the **Firm** (including any proposal for the **Business** to cease with or merge with, or be taken over or acquired by, another entity) or any act of insolvency or bankruptcy of any **Insured**. Where such notice is given and/or where there is any material alteration to the risk **ACE** shall be entitled to cancel this **Policy** in accordance with the Insurance Contracts Act (Cth) 1984.

6.2 Cancellation

- (a) The **Insured** may only cancel this **Policy** with the written consent of **ACE**.
- (b) **ACE** may only cancel this **Policy** by written notice given to the **Insured** and in accordance with the requirements of the Insurance Contracts Act (Cth) 1984.

Upon cancellation of this **Policy**, **ACE** will allow a refund of unearned **Premium** in accordance with its customary short term rates but such refund will never be greater than 75% of the **Premium**.

6.3 Governing Law

This **Policy** is governed by, and interpreted in accordance with, the laws of the Commonwealth of Australia and the State or Territory of the office of **ACE** from which the **Policy** was issued. Disputes relating to interpretation of this **Policy** must be submitted to the exclusive jurisdiction of the Courts of that State or Territory.



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6.4 Severability and Non-Imputation

Where more than one person or entity is insured under this **Policy**;

- (a) failure by one person or entity to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth); or
- (b) misrepresentation by one person or entity to **ACE** before this **Policy** commences; or
- (c) failure by one person or entity to comply with any terms of conditions of this **Policy**

does not prejudice the right of any other **Insured** to indemnity under this **Policy**.

However, this clause only applies if;

- (i) the other person or entity is innocent of, and has no knowledge of, such conduct; and
- (ii) as soon as practicable after becoming aware of the conduct, they notify **ACE** of all facts relating to such conduct.

7. CLAIMS CONDITIONS

7.1 Notification of Claims

- (a) As soon as practicable, the **Insured** must give **ACE** notice in writing of any **Claim** first made against any **Insured** during the **Period of Insurance**. The **Insured** must give notices under this clause to **ACE**:

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

- (b) All notifications under this **Policy** must include the following information:
 - (i) a specific description of the demand or assertion made against the **Insured** including the date any **Claim** was made; and
 - (ii) the details of any parties involved; and
 - (iii) a copy of any written demand or assertion and any document commencing proceedings against the **Insured**.

7.2 Disclosure of Information

Legal representatives appointed by **ACE** to act on an **Insured's** behalf shall be entitled to disclose to **ACE** any information obtained while so acting and each **Insured** agrees to waive any claim for legal professional privilege to the extent that the privilege would otherwise prevent such legal representatives from disclosing information to **ACE**.

7.3 Conduct of Proceedings

- (a) With respect to any **Claim** notified under this **Policy**, it is the duty of the **Insured**, not **ACE**, to defend any **Claim** made against an **Insured**. **ACE**, however, may take over and conduct (in the name of any **Insured**) the defence of any **Claim** in respect of which **ACE** is or maybe liable to indemnify such **Insured**.
- (b) An **Insured** must not incur any **Defence Costs** without the prior written consent of **ACE**, which shall not be unreasonably withheld. **ACE** shall not be liable to indemnify any **Insured** for any **Defence Costs** unless **ACE** provides its prior written consent to the incurrence of such costs.



- (c) The **Insured** must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any actual or potential **Loss** arising from any actual or possible **Claim** under this **Policy**.
- (d) An **Insured** must not settle or make any admission, offer, payment or otherwise assume any contractual obligation in relation to any **Claim** (including incur any **Defence Costs**) in respect of which **ACE** is, or may be, liable to indemnify any **Insured**, without the prior written consent of **ACE**. **ACE** is not liable to indemnify any **Insured** for any settlement, admission, offer, payment or assumed obligation unless **ACE** provides its prior written consent.
- (e) Each **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 **Claim** or any proceedings.

7.4 Disputes as to Defence & Settlement of Claims

- (a) Where a dispute arises between **ACE** and an **Insured** as to whether a **Claim** should be settled, **ACE** will be entitled to brief **Senior Counsel** (to be mutually agreed or, in default of agreement, to be selected by the then President of the local **Bar Association or Council**, or equivalent organisation) to advise on whether or not the **Claim** should be contested, and if not, on the amount for which the **Claim** should be settled. In providing such advice and in making any recommendation as to settlement, **Senior Counsel** is entitled to take into account both legal and commercial considerations. **Senior 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. Neither **ACE** nor the **Insured** will be required to contest the **Claim** unless **Senior Counsel** recommends that, having regard to all the circumstances, the **Claim** should be contested. The costs of obtaining this recommendation will be paid by **ACE** as part of the **Defence Costs**.
- (b) If **Senior Counsel** recommends that having regard to all the circumstances, settlement of the **Claim** should be attempted, then settlement of the **Claim** must be attempted in accordance with **Senior Counsel's** recommendation.
- (c) Where settlement is attempted in accordance with **Senior 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) If the **Insured** refuses to consent to a settlement recommended by **Senior Counsel**, **ACE's** liability will be limited to the amount for which the **Claim** could have been settled, plus the **Defence Costs** incurred up to the date the recommendation was made.

7.5 Subrogation

If any payment is made by **ACE** in respect of a **Claim** under this **Policy**, **ACE** will be subrogated to all rights of indemnity, contribution or recovery of the **Insured** in relation to that payment. No **Insured** may surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior written consent of **ACE**.

ACE will not subrogate from any Employee or former Employee of the Firm unless the Claim arose from serious or wilful misconduct.



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8. DEFINITIONS & 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; and
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (d) references to an amount of money are references to that amount in Australian dollars; and
- (e) bolded words used in this **Policy** have the meanings set out in this Section;

8.2 **ACE** means

ACE Insurance Limited ABN 23 001 642 020.

8.3 **Act of Terrorism** means

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

8.4 **Bodily Injury** means

physical injury, sickness, disease, death, mental injury, mental anguish or nervous shock.

8.5 **Business** means

the professional business activities of the **Firm** set out in Item 3 of the **Schedule**.

8.6 **Circumstances** means

any facts, matters or circumstances which give rise to a **Claim** or has the potential to give rise to a **Claim**.

8.7 **Claim** means

- (a) the receipt by the **Insured** of any written demand for money or damages made against the **Insured**; and/or
- (b) any originating legal or arbitral process, cross claim, counterclaim or third party notice served upon the **Insured** which contains a demand made against the **Insured** for civil compensation or civil damages.

8.8 **Date of Continuous Cover**

means the date shown in **Item10** of the **Schedule**.

8.9 **Defence Costs** means

legal costs and disbursements and related expenses reasonably incurred in:

- (a) defending any proceedings;
- (b) conducting any proceedings for contribution or recovery; or
- (c) investigating, avoiding, reducing or settling any **Claim**:

incurred by:

- (i) the **Insured** with the written consent of **ACE** after reporting the **Claim** to **ACE**; or



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- (ii) **ACE** after it has assumed conduct of any such proceedings.

Defence Costs do not include any internal or overhead expenses of the **Firm** or the cost of any **Insured's** time.

8.10 Documents means

deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, except:

- (a) **Electronic Data**; or
- (b) money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument.

8.11 Employee means

- (a) each person who was, is or becomes during the **Period of Insurance** employed by the **Firm** in the ordinary course of the **Business** and who is paid by the **Firm** by way of salary or wages ; or
- (b) a volunteer working without fee or reward in the ordinary course of the **Business**, provided that the performance of whose duties is subject to the direction and control of the **Firm**.

8.12 Electronic Data means

facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

8.13 Excess means

the amount specified in Item 7 of the **Schedule** other than:

- (a) in respect of Optional Extension 4.3 (Fidelity), when such amount shall be the amount specified in Item 8 of the **Schedule**;
- (b) in respect of any other excess specified in any endorsement to the **Policy**.

8.14 Financial Interest means

direct or indirect control or ownership of 15% or more of the issued share capital and/or options of a public company or 15% or more of the value of any other company, entity or enterprise.

8.15 Firm means

the person, partnership or company specified in the **Schedule**. Where two or more entities are specified, the **Firm** means each of them, unless the context otherwise requires.

8.16 Genetically Modified Organism means

any living organism in which the genetic material has been altered through gene technology in a way that does not occur naturally.

8.17 Insured means

- (a) the **Firm**;
- (b) each **Principal** but only in respect of work performed whilst a **Principal** of the **Firm**; and
- (c) each **Employee** but only in respect of work performed whilst a **Employee** of the **Firm**.



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8.18 Joint Venture means

any enterprise carried on in common by the **Firm** with a third party or parties (not being an **Insured** under this **Policy**).

8.19 Loss means

the aggregate of all amounts payable in respect of a **Claim** (including but not limited to any damages awarded, judgments entered, settlements reached) and **Defence Costs**.

Loss does not include:

- (a) aggravated, punitive or exemplary damages;
- (b) fines or penalties imposed by law (including civil penalties); or
- (c) any matters which are deemed uninsurable under the law.

8.20 Loss of Money means

any theft, misappropriation or physical loss, damage or destruction of any money, bearer bond, coupon, stamp, bank note, currency note or negotiable instrument either:

- (a) belonging to the **Insured**; or
- (b) for which the **Insured** is legally liable.

8.21 Period of Insurance means

the period specified in Item 4 the **Schedule**.

8.22 Policy means:

the contract of insurance between **ACE** and the **Insured** which comprises this **Policy** wording, the **Proposal**, the **Schedule** and any document issued by **ACE** varying the policy coverage.

8.23 Pollutants means

any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

8.24 Premium means

the sum specified in Item 14 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**.

8.25 Previous Business means

the business or businesses specified in Item 12 (a) of the **Schedule**.

8.26 Principal means, where the **Firm** is or was:

- (a) a body corporate - each director and the company secretary of that body corporate and each **Employee** with the right to participate in any distribution of the profits of that body corporate; and
- (b) a partnership - each partner of that firm and each person held out as a partner; and
- (c) a sole practitioner - that practitioner,

and includes each former principal and each person who becomes a principal during the **Period of Insurance**.



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8.27 Prior Known Fact

means any fact which:

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

might result in any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty by the **Insured** in the conduct of the **Business**.

8.28 Proposal means

the written proposal and any supplementary proposal including any statements and information contained therein and any material provided by the **Insured** that is relied upon by **ACE** in issuing cover under this **Policy**.

8.29 Relative means

- (a) any spouse, domestic partner or companion; or
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling or child.

8.30 Retroactive Date means:

the date specified in Item 9 of the **Schedule**.

8.31 Schedule means

the schedule **ACE** issues to the **Firm** with this **Policy** wording or any subsequent or amended version of that schedule.

8.32 Senior Counsel means

a practising barrister who is entitled to practice as a Queen's Counsel or Senior Counsel in Australia or New Zealand.

8.33 Sub Limit of Liability means:

the limit of **ACE's** total liability applicable to a particular Extension of the **Policy** as specified in that Extension and/or the **Schedule**.

8.34 Subsidiary means

any entity:

- (a) over which the **Firm** is in a position to exercise effective direction and control; or
- (b) which is deemed to be a subsidiary of the **Firm** by virtue of any applicable legislation or law.