

DIRECTORS & OFFICERS *ELITE* INSURANCE POLICY

In consideration of the payment of the Premium and in reliance upon all statements made and information furnished to ACE Insurance Limited ABN 23 001 642 020 ("ACE"), including statements made in the proposal and materials accompanying it, and subject to all terms, conditions, exclusions and limitations of this Policy, ACE agrees with the Insured(s) and with the Company as follows:

1. Insuring Agreement

ACE shall pay on behalf of the Insured(s) all Loss which they are legally obligated to pay, and/or shall pay on behalf of the Company all Loss which the Company is legally required or permitted to pay the Insured(s) as advancements or indemnity under applicable company indemnity laws or agreements, for any Claim against the Insured(s) for a Wrongful Act, provided the Claim is first made against the Insured(s) during the Policy Period.

2. Definitions

- (a) "Claim" means any notice received by the Company, or by the Insured(s) alleged to have committed a Wrongful Act, of the intention of a person or entity to hold the Insured(s) responsible for the results of any Wrongful Act, including any demand received by the Insured(s) for money or services naming the Insured(s) as defendant(s), or the institution of legal, arbitration or administrative proceedings against the Insured(s).
- (b) "Company" means the Company shown in Item 1 of the Schedule and any Subsidiary.
- (c) "Deductible" means the amount shown in Item 4 of the Schedule.
- (d) "Defence Costs" means reasonable legal fees, costs and expenses incurred by or on behalf of the Insured(s) with the written consent of ACE, such consent not to be unreasonably withheld (but shall not include wages, salaries or other remuneration of the Insured(s) or of any employee of the Company), which are necessary to defend or appeal a Claim covered by this Policy.
- (e) "Discovery Period" means the period of 12 months referred to in Clause 3(f) which shall run from the date this Policy expires.
- (f) "Employment Practice Breach" means, with respect to any past, present or prospective employee of the Company, any actual or alleged:
- 1) employment-related sexual or other unlawful harassment;
 - 2) termination of employment which is against the law;
 - 3) employment-related unlawful discrimination;
 - 4) employment-related denial of natural justice;
 - 5) false or misleading advertising or representation involving terms or conditions of employment with the Company;
 - 6) employment-related defamation;
 - 7) failure to employ, promote or grant tenure;
 - 8) unfair deprivation of career opportunity;
 - 9) unfair discipline or evaluation of employment performance;
 - 10) failure to provide or adhere to adequate employment policies or procedures;
 - 11) violation of any Federal, State or Local statute or regulation governing employment practices;

- 12) breach of employment contract;
 - 13) employment-related invasion of privacy.
- (g) “Insured(s)” means all natural persons who were, now are or shall be directors, officers, company secretaries or employees of the Company.

The term Insured(s) shall also include:

- (1) the lawful spouse of any director, officer, company secretary or employee of the Company, PROVIDED THAT the Claim is first made against such spouse during the Policy Period solely by reason either of such spouse’s status as a spouse or his or her ownership interest in any real or personal property against which recovery is sought by reason of an actual or alleged Wrongful Act of any such director, officer, company secretary or employee of the Company;
- (2) the estates, heirs or legal representatives of deceased persons who were directors, officers, company secretaries or employees of the Company at the time of the Wrongful Act upon which the Claim is based;
- (3) the legal representatives of directors, officers, company secretaries or employees of the Company in the event of incompetency, insolvency or bankruptcy;

The term Insured(s) shall not include:

- (4) a receiver and manager;
- (5) a receiver who is also not a manager;
- (6) a liquidator;
- (7) a trustee/administrator administering a scheme of arrangement;
- (8) an official manager;
- (9) an external auditor;
- (10) a trustee or administrator of a superannuation scheme,

or any employee(s) of such person(s).

- (h) “Investigation” means any official investigation, inquiry, public examination, commission or prosecution, criminal or otherwise;
- (i) “Loss” means any damages, judgments, settlements and Defence Costs. Loss shall not include punitive or exemplary damages or fines or penalties imposed by law which are deemed uninsurable under the law.
- (j) “Non-Profit Organisation” means any corporation, institution, association, trust, fund or foundation established for any social, community, charitable or industry purpose to provide services or benefits to its members and not for the purpose of making profits.
- (k) “Officer” has the meaning as defined in Section 82A of the Corporations Act 2001.
- (l) “Outside Directorship” means the position held by the Insured(s) in an Outside Organisation with the knowledge and consent or at the request of the Company.
- (m) “Outside Organisation” means any company or organisation, other than the Company, in which an Outside Directorship is held.
- (n) “Policy” means:
 - (1) the Insuring Agreement, the Definitions, the Extensions, the Exclusions, the Conditions and all other terms contained herein;
 - (2) the Proposal and any attachments thereto;
 - (3) any Endorsement attaching to and forming part of this Policy either at commencement of the Policy Period or during the Policy Period.
- (o) “Policy Period” means the period of time shown in Item 2 of the Schedule of this Policy.

(p) "Premium" means the premium shown in Item 5 of the Schedule and any additional premium shown in any Endorsement attaching to and forming part of this Policy.

(q) "Subsidiary" means any company, including any company held directly or indirectly through one or more Subsidiaries, in which, at the inception of the Policy Period or at any time during the period covered by an earlier Directors & Officers Liability policy:

(1) the Company:

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

(2) the accounts are consolidated with the accounts of the Company in accordance with professionally accepted Accounting Standards for the consolidation of accounts applicable in the country in which this Policy was issued.

(r) "Wrongful Act" means any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the Insured(s) while acting in their capacity as Insured(s) of the Company or of any Outside Organisation to which the Outside Directorship Extension applies.

3. Extensions

The following Extensions, which are automatically included in this Policy, are subject to all of the terms, conditions, exclusions and limitations of this Policy. These Extensions do not increase the Limit of Liability unless ACE otherwise agrees in writing.

(a) Advancement of Defence Costs

ACE shall pay Defence Costs on behalf of the Insured(s) on an ongoing basis prior to the final payment or settlement of any Claim PROVIDED THAT:

(1) such Defence Costs are incurred with the written consent of ACE, such consent not to be unreasonably withheld;

(2) such advance payments by ACE shall be repaid to ACE in the event that the Insured(s) shall not be entitled to payment of any Loss or receipt of any benefit under this Policy.

(b) Investigations, Inquiries, Prosecutions (Criminal or Otherwise)

ACE shall pay on behalf of the Insured(s) on an ongoing basis all reasonable legal fees, costs and expenses incurred in being legally represented with respect to any legally compellable attendance at any Investigation PROVIDED THAT:

(1) the Investigation involves an allegation that the Insured(s) committed a Wrongful Act;

(2) the allegation is first made against the Insured(s) during the Policy Period;

(3) such legal fees, costs and expenses are incurred with the written consent of ACE, such consent not to be unreasonably withheld;

(4) this Extension does not cover any fines or penalties imposed by law which are deemed uninsurable under the law;

(5) this Extension does not cover wages, salaries or other remuneration of the Insured(s) or of any employee of the Company;

(6) such advanced payments by ACE shall be repaid to ACE in the event that the Insured(s) shall not be entitled to payment of any Loss or receipt of any benefit under this Policy.

(c) Acquisition, Creation, Sale or Dissolution of Subsidiaries

If during the Policy Period the Company acquires a Subsidiary that:

- (1) increases the Company's total assets by no greater than 10% based on the Company's latest annual report; and
- 2) is domiciled outside of the United States of America or Canada,

then the Insured(s) of such Subsidiary shall be automatically covered by this Policy for Claims for a Wrongful Act committed or alleged to have been committed on or after the effective date of such acquisition or creation, and no notice needs to be given to ACE relating to the acquisition or creation of such Subsidiary and no additional premium shall be paid relating to this extended cover.

If during the Policy Period the Company acquires or creates a Subsidiary that either increases the Company's assets by more than 10%, or is domiciled in the United States of America or Canada, and written notice of such acquisition or creation is given to ACE as soon as practicable, and the Company agrees to pay any additional premium required and agrees to any amendments to the Policy required by ACE relating to such Subsidiary, then the Insured(s) of such Subsidiary shall be covered by this Policy for Claims for a Wrongful Act committed or alleged to have been committed on or after the effective date of such acquisition or creation.

If during the Policy Period the Company acquires or creates a Subsidiary, and if the Insured(s) require cover for Claims for a Wrongful Act committed or alleged to have been committed prior to the effective date of such acquisition or creation, ACE may at its discretion, and subject to the payment of an appropriate additional premium, agree to provide such cover after presentation and consideration

of a complete proposal and all necessary information.

If the Company effects a sale or dissolution of a Subsidiary, cover under this Policy shall apply to any person who was an Insured of that Subsidiary prior to the sale or dissolution Provided that cover shall only apply for or in respect of Claims for a Wrongful Act committed or alleged to have been committed prior to the effective date of sale or dissolution.

(d) Continuous Cover

Notwithstanding Exclusions 4(b), (c) and (d), and in the absence of fraudulent non-disclosure, this Policy extends to cover the Insured(s) for any Claim, and for any Wrongful Act which may give rise to a Claim, which should or could have been notified to ACE under an earlier Directors and Officers Liability Policy issued by ACE and which is notified during the Policy Period, PROVIDED THAT:

- (1) ACE has been the insurer pursuant to a Directors and Officers Liability Insurance Policy continuously between the date when such notification should have been given and the date when notification was in fact given;
- (2) the terms, conditions and limits of this Policy shall not apply to this Extension, which shall be subject to the terms, conditions and limits of the ACE Directors and Officers Liability Insurance Policy which applied at the date on which such notification should have been given.

(e) Outside Directorships

For the period during which the Outside Directorship is held this Policy covers:

- (1) Outside Directorships in any Outside Organisation listed in the Schedule of Outside Directorships attached to this Policy; and

- (2) Outside Directorships in any Non-Profit Organisation,

PROVIDED THAT:

- (a) the Claim arises from a Wrongful Act which occurred during the course of and prior to the Outside Directorship ceasing; and
- (b) the Claim is first made against the Insured(s) during the policy period.

If during the Policy Period cover is requested for any other Outside Directorship(s) cover shall automatically extend to such Outside Directorship(s) for a period of 90 days from commencement of such Outside Directorship(s). Any cover beyond such 90 day period shall be subject to:

- (3) receipt of the most recent annual reports and audited financial statements for each Outside Organisation and/or Non-Profit Organisation proposed; and
- (4) receipt of details of any Directors and Officers Liability Insurance Policy held by or on behalf of the Outside Organisation and/or Non-Profit Organisation or its Directors and Officers; and
- (5) receipt of any other information which ACE may require; and
- (6) acceptance by ACE in writing of each Outside Directorship.

The cover provided by this Policy for Outside Directorships does not extend to cover:

- (7) any Outside Organisation(s) or Non-Profit Organisation(s) in which the Outside Directorship is held or any other director, officer or employee of such Outside Organisation(s) or Non-Profit Organisation(s);

- (8) Loss with respect to which cover is available pursuant to any policy of insurance arranged by or on behalf of any Outside Organisation(s) or Non-Profit Organisation(s);

- (9) Loss with respect to which cover is available pursuant to any Underlying Policy listed in the Schedule of Outside Directorships attached to this Policy;

- (10) Loss with respect to which indemnity is available from any Outside Organisation(s) or Non-Profit Organisation(s);

- (11) Loss based on, arising from or attributable to any Claim brought by or on behalf of the Insured(s), the Outside Organisation(s) or Non-Profit Organisation(s) or any directors, officers, company secretaries or employees of the Outside Organisation(s) or Non-Profit Organisation(s) other than:

a) any Claim based on, arising from or attributable to an Employment Practice Breach;

b) any Claim that is a derivative action brought or maintained in the name of an Outside Organisation or Non-Profit Organisation by any member(s), former member(s) or person(s) entitled to be registered as member(s) of the Outside Organisation or Non-Profit Organisation or of a related body corporate, or by any Officer(s) or former Officer(s) of the Outside Organisation or Non-Profit Organisation without the participation, solicitation or assistance of any Insured(s), the Outside Organisation or Non-Profit Organisation or any directors, officers, company secretaries or employees of the Outside Organisation or Non-Profit Organisation

Organisation except when such participation, solicitation or assistance is required by law.

(f) Discovery Period

If ACE refuses to renew this Policy, the Company and/or the Insured(s) may upon payment of an additional 50% of the full annual premium extend the cover under this Policy for a period of 12 Months which shall run from the date this Policy expires, for any Claim first made against the Insured(s) during the Discovery Period and notified in writing to ACE during the Discovery Period, but only in respect of a Wrongful Act committed or alleged to have been committed before the date of expiration of the Policy Period.

The right of the Company and/or the Insured(s) to exercise the Discovery Period must be by notice to ACE in writing within 30 days of expiration of the Policy Period.

The right to exercise the Discovery Period does not apply in the event of cancellation of this Policy. ACE's offer of renewal terms, conditions, limits of liability or premium different from those of the expiring policy shall not constitute a refusal to renew.

(g) Occupational Health and Safety

Notwithstanding Exclusion (h), ACE shall pay on behalf of the Insured(s) all legal costs, fees, expenses and Defence Costs pursuant to Extensions (a) and (b) in respect of:

- (1) any Claim against the Insured(s); or
- (2) any Investigation,

arising from any actual or alleged breach of any occupational health and safety legislation.

4. Exclusions

ACE shall not be liable to make any payment for Loss based on, arising from or attributable to:

- (a) (1) fraudulent, dishonest or criminal acts of the Insured(s) if such acts are found by any Court to be fraudulent, dishonest or criminal;
- (2) any personal profit or advantage gained by the Insured(s) to which such Insured(s) was not legally entitled.
- (b) any litigation or other proceedings begun before the inception date of this Policy.
- (c) any fact, circumstance, act, omission or claim of which notice has been given under any policy existing or expired before or on the inception date of this Policy.
- (d) any fact, circumstance, act or omission which may give rise to a claim and of which the Insured(s) are aware prior to the inception of this Policy.
- (e) any Claim brought by or on behalf of the Insured(s) or the Company other than any Claim:
 - (1) arising from an Employment Practice Breach;
 - (2) that is a derivative action brought or maintained in the name of the Company by any member(s), former member(s) or person(s) entitled to be registered as member(s) of the Company or of a related body corporate, or by any Officer(s) or former officer(s) of the Company, without the participation, solicitation or assistance of any Insured(s) or the Company except when such participation, solicitation or assistance is required by law;
 - (3) that is brought or maintained by any former Insured(s).

- (4) instigated by the Australian Securities and Investments Commission pursuant to Section 50 of the Australian Securities Commission Act 1989 or by any other regulatory authority pursuant to any legislation;
 - (5) for contribution or indemnity, if the Claim for contribution or indemnity results from a Claim which is covered under this Policy.
- (f) any Claim brought against any person acting in the capacity:
- (1) as trustee or administrator of any occupational pension scheme or employment benefit programme; or
 - (2) as external auditor.
- (g) (1) any injury, damage, expense, cost, loss, liability or legal obligation in any way related to pollution however caused including shareholder or derivative Claims arising from or attributable to such pollution. Pollution includes the actual, alleged or potential presence in or introduction into the environment of any substance, if such substance has, or is alleged to have, the effect of making the environment impure, harmful or dangerous. Environment includes any air, land, structure or the air therein, watercourse or water, including groundwater; or
- (2) the hazardous properties of nuclear or radioactive material.
- (h) any Claim for:
- (1) bodily injury, sickness, disease, death or emotional distress of any person, provided however that any Claim for emotional distress shall not be excluded with respect to any actual or alleged Employment Practice Breach; or

(2) damage to or destruction of any tangible property including loss of use of such property.

- (i) any Claim for liability based upon, arising from or in consequence of the Company's mis-statement of, or failure to inform ACE of, the extent of its entitlement to an input tax credit for the premium at or before the time a claim is made under this policy.

For the purpose of determining the applicability of the exclusions contained in this Policy no conduct of, fact pertaining to or knowledge possessed by any Insured(s) shall be imputed to any other Insured(s) to determine if cover is available.

5. Conditions

(a) Allocations

If a Claim against the Insured(s) includes causes of action against uninsured defendants, allegations of uninsured damages, uninsured acts or other uninsured matters, ACE, the Company and the Insured(s) agree to use their best efforts to agree upon a fair and proper allocation of defence costs, settlements and damages between ACE, the Company and the Insured(s).

(b) Avoidance of Policy

In the event that ACE is entitled to avoid this Policy from inception, or from the time of any variation in cover, due to non disclosure or misrepresentation by the Company or the Insured(s), ACE shall maintain cover for directors who are Insured(s) under this Policy until the expiry date of the Policy Period. Provided that such directors are able to establish to the satisfaction of ACE that they are innocent and free from all such fraudulent conduct, non disclosure, misrepresentation or intent to deceive. Any return of premium or amendment to the terms of this Policy shall be at the discretion of ACE.

(c) Claims/Circumstances/Investigations Notification

The Company and the Insured(s) shall give written notice to ACE as soon as practicable of:

- (1) any Claim first made during the Policy Period;
- (2) any facts or circumstances of which they shall first become aware during the Policy Period which may give rise to a Claim;
- (3) any notice first received during the Policy Period of any Investigation(s),

but in no event later than 45 days after this Policy expires, or, in the case of Claims first made, facts and circumstances of which the Company and/or the Insured(s) shall first become aware and notice(s) of any Investigation(s) first received during the Discovery Period, if applicable, no later than 45 days after the Discovery Period expires.

The Company and the Insured(s) shall give ACE such information and cooperation as it may reasonably require to enable ACE to investigate and determine both its liability under this Policy and the extent of the Insured(s') actual or potential liability for any Claim or arising from any facts or circumstances which may give rise to a Claim. Notice and all information shall be sent in writing to ACE at 28 O'Connell Street, Sydney NSW 2000 or by facsimile to (61 2) 9221 3513.

(d) Claims - Defence & Settlement

Neither the Company nor the Insured(s) shall admit liability for or settle any Claim or incur Defence Costs without the written consent of ACE, such consent not to be unreasonably withheld.

ACE shall at all times have the right but not the duty to associate in the investigation, defence or settlement of any Claim to which this Policy may apply.

ACE shall at all times have the right but not the duty to assume conduct in the name of the Insured(s) of the defence or settlement of any Claim or any claim for contribution or indemnity against any person or entity with respect to which the Insured(s) may have rights.

ACE and the Insured(s) shall not be required to contest any Claim unless a Senior Counsel (to be mutually agreed upon by ACE and the Insured(s)) shall advise that the Claim should be contested. The Senior Counsel shall take into consideration the economics of the Claim, the damages and costs which are likely to be recovered by the plaintiff, the Defence Costs which will be incurred in contesting the Claim and the prospects of the Insured(s) successfully defending the Claim. The costs of obtaining such opinion from the Senior Counsel shall be paid by ACE as part of the Defence Costs. Should the Senior Counsel advise that in all the circumstances the Claim should not be contested but should be settled ACE and the Insured(s) shall not object to or oppose settlement of the Claim within the limits advised by the Senior Counsel as being reasonable.

(e) Confidentiality

The Company may disclose that it has paid or agreed to pay a premium in respect of a contract insuring the Insured(s) against a liability.

The Company shall not, without the prior written consent of ACE, otherwise disclose other than to the Insured(s) the existence of or the terms of this Policy, including but not limited to the identity of ACE, the limit of liability and the premium, unless required to do so by law.

(f) Deductible

The Company shall pay the Deductible for all Loss resulting from each Claim. ACE shall have no obligation to pay Loss until the Insured(s) or the Company have incurred Loss in the amount of the Deductible if applicable, except that, if the Company is unable to pay the amount of the Deductible due to insolvency then, subject to all other terms and conditions of this Policy, ACE shall pay such Loss.

If two or more Claims are made against any Insured(s) arising out of a single Wrongful Act, or out of a series of related Wrongful Acts, the Claims shall be treated as a single Claim for the purpose of applying the Deductible. This single Claim will be treated as if it was first made during the Policy Period at the earlier of:

- (1) when the earliest Claim was first made, or
- (2) when the earliest circumstance giving rise to a Claim was notified.

The Deductible shall apply to all Loss for which advancement or indemnification by the Company is required or permissible under company indemnification laws or agreements regardless of whether or not the Company actually advances or indemnifies the Insured(s) for such Loss.

The amount of any Deductible payable will be calculated after deduction of any input tax credit that is or may be available to the Company for payment of the Deductible.

(g) Limit of Liability

The amount shown in Item 3 of the Schedule is ACE's maximum aggregate liability for all Loss including Defence Costs, arising from all Claims first made during the Policy Period and the Discovery Period if applicable.

Two or more Claims arising out of a single Wrongful Act or a series of related Wrongful Acts shall be treated as a single Claim. All such Claims shall be treated as if first made during the Policy Period or Discovery Period at the earlier of:

- (1) when the earliest Claim was first made, or
- (2) when the earliest circumstance giving rise to a Claim was notified.

(h) Loss Mitigation

The Company and the Insured(s) shall, at their own cost, use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss under this Policy.

(i) Policy Interpretation

This Policy shall be governed by and interpreted in accordance with the laws of the Commonwealth of Australia and of the State or Territory in which this Policy was issued.

Any disputes regarding the interpretation of this Policy shall be submitted to the exclusive jurisdiction of the courts of Australia.

(j) Preservation of Indemnity

In the event and to the extent that the Company is legally required or permitted to pay the Insured(s) Loss as advancements or indemnity under applicable company indemnity laws or agreements but fails or refuses to do so for any reason, ACE shall pay all Loss on behalf of the Insured(s). In such event the Deductible shall be paid by the Company to ACE;

PROVIDED THAT the amount of the Deductible will not be payable by the Company if the Company is unable to pay the amount of the Deductible due to insolvency.

(k) Proposal Form Disclosure and Severability

ACE has relied upon the statements made in the proposal, the supplementary proposal(s) if any, and materials accompanying them in granting cover under this Policy. All such statements and materials form the basis of the contract of insurance.

However the proposal(s) shall be construed as separate proposal(s) by each of the Insured(s) and, with respect to statements made and particulars provided in the proposal(s), no such statements or particulars, and no information possessed by the Insured(s), shall be imputed to any other Insured(s) to determine whether cover is available for any Claim against such other Insured(s).

(l) Section 199B of the Corporations Act 2001

The consideration for cover provided under this Policy for those liabilities referred to in Section 199B of the Corporations Act 2001 is deemed to be 1% of the premium shown in Item 5 of the Schedule.

(m) Subrogation

In the event ACE makes any payment under this Policy, ACE shall be subrogated to all rights of recovery of the Company and all Insured(s), and the Company and the Insured(s) shall fully cooperate with ACE in securing such rights.

(n) Takeovers and Mergers

If during the Policy Period the Company merges with or consolidates into another entity, or any person or entity acquires 50% or more of the issued capital of the Company, then the cover provided under this Policy is amended so as to apply only to a Wrongful Act committed prior to the effective date of such transaction.

In the event of such takeover or merger the Company may cancel this Policy on behalf of the Company and the Insured(s) by sending written notice to ACE, stating when thereafter the cancellation shall be effective, whereupon ACE shall refund the unearned premium at customary rates.

In the event of such takeover or merger the Company and ACE may agree that this Policy applies to a Wrongful Act committed after the effective date of such transaction subject to:

- (1) presentation by the Company to ACE of all information required by ACE;
- (2) payment of any additional premium which ACE may require.

(o) Goods and Services Tax

Where ACE makes payment under this Policy the amount of the payment will be reduced by the amount of any input tax credit that the Insured(s) is or would, in the opinion of ACE, be entitled to for the repair, replacement or reinstatement of any goods or property lost, damaged or destroyed or for the provision of any services to the Insured.

If the Insured(s) is entitled to an input tax credit for the premium, the Insured(s) must inform ACE of the extent of that entitlement at or before the time a claim is made under this Policy. ACE will not be liable for payment of any claim based upon, arising from or in consequence of the Insured(s)' mis-statement of, or failure to inform ACE of the extent of its entitlement to an input tax credit for the premium.

If the Insured(s) makes a claim under this Policy, it must inform ACE of its

Australian Business Number if it has one.

(p) Territory Covered

This Policy covers a Wrongful Act committed and Claims made anywhere in the World.