



ace insurance

Elite Association Protector **POLICY**

INSURED ORGANISATION: Body Corporate – As agreed

PERIOD: As Per the Orion Body Corporate Schedule



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Elite Association Protector

SCHEDULE

Policy No: TBA

Item 1. Insured Organisation: Body Corporate – As bound by Bordereaux

Principal Address: C/- Crombie Lockwood Insurance Brokers

Item 2. Activities: Body Corporate

Item 3. Policy Period: From:
To:

Item 4. Limit of Liability: \$1,000,000 any one claim and in the aggregate

Item 5. Insuring Clause:	Sub-limit	Deductible
1.1 (a) Officers	\$ 1,000,000*	\$ 1,000 each Claim or Loss
1.1 (b) Association Reimbursement		\$ nil
1.2 Employment Practices Liability	Not Covered	
1.3 Superannuation/Trustees Liability	Not Covered	
1.4 Entity Liability	Not Covered	
1.5 Professional Indemnity	Not Covered	
1.6 Fidelity	Not Covered	
1.7 Statutory Liability	\$ 1,000,000	\$ 1,000 each Allegation
1.8 Employer's Liability	\$ 1,000,000	\$ 1,000 each Event

** a single sub-limit of liability applies to all Claims covered by Insuring Clause 1.1*

Item 6. Retroactive Date: Original Inception of cover with ACE

Item 7. Funds: None

Item 8. Premium: As Agreed

Item 9. Optional Extensions: Outside Directorship Cover Excluded

Item 10. Endorsements: Building Defect & Mould Exclusion - Amended

Dated at AUCKLAND -
SIGNED:



ENDORSEMENTS

Endorsement Number: 1

Effective Date: As per Orion Policy Schedule

Building Defects and Mould Endorsement

In respect of Insuring Clauses 1.7 and 1.8, **ACE** will not indemnify any **Insured** against any liability, **Claim** or **Circumstances** (or related **Defence Costs**) directly or indirectly caused by, arising out of or in any way connected with:-

1. the actual, threatened or alleged ingress, inhalation, discharge, dispersal, seepage, migration, absorption, release or escape of water, liquid or moisture from any source at any time in or into any building or structure or any materials or components thereof; or
2. the actual, threatened or alleged existence or effects of any concentration of water, liquid or moisture on or within any building or structure or any materials or components thereof; or
3. the actual, threatened or alleged existence or effects of:
 - a. fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms; or
 - b. any spore, toxin, vapour, gas or other emission or organic or inorganic body or substance, created, produced by or emanating from such fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms,in any building or structure or any materials or components thereof; or
4. any costs or expenses arising out of the preventing, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the matters set out in paragraphs 1, 2 and/or 3 above; or
5. the actual, threatened or alleged failure of any building or structure or any materials or components thereof to comply with or conform to the requirements of the New Zealand Building Code contained in the first Schedule to the Building Regulations 1992 (or any amendment or substitution thereof) or to meet the level of performance, quality, fitness or durability of its intended purpose, in relation to:-
 - a. external water, liquid or moisture; or
 - b. protection from external water, liquid or moisture entering that building or structure or any materials or components thereof, or the effects thereto.

This exclusion shall apply regardless of any other cause, event, building materials or building components that contributed concurrently or in any sequence to the liability, **Claim** or **Circumstance**.

For the avoidance of doubt it is noted and agreed that this endorsement does not apply to Insuring Clause 1.1.

In all other respects this **Policy** remains unaltered.

Dated at AUCKLAND -
SIGNED:



POLICY WORDING

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

1. Insuring Clauses

If "NOT COVERED" is shown in Item 5 of the Schedule to this **Policy** in relation to any Insuring Clause, such Insuring Clause and any reference to it within this **Policy** is deemed to be deleted and such coverage is not afforded.

1.1 Officers and Association Reimbursement

ACE shall pay up to the sub-limit of liability specified in Item 5 of the Schedule on behalf of:

- (a) the **Insured Person(s)** all **Loss** of the **Insured Person(s)** which they are legally obligated to pay; and/or
- (b) the **Association** all **Loss** which the **Association** is legally required or permitted to pay the **Insured Person(s)** as advancements or indemnity under applicable legislation or agreements,

for any **Claim** for any **Wrongful Act** first made against the **Insured Person(s)** and first notified to ACE, during the **Policy Period**.

1.2 Employment Practices Liability

ACE shall pay on behalf of the **Insured(s)** all **Loss** which they are legally obligated to pay up to the sub-limit of liability specified in Item 5 of the Schedule for any **Claim** for any **Wrongful Act** first made against the **Insured(s)** by an **Employee** and first notified to ACE during the **Policy Period**.

1.3 Superannuation / Trustees Liability

ACE shall pay on behalf of the **Insured(s)** all **Loss** which they are legally obligated to pay up to the sub-limit of liability specified in Item 5 of the Schedule for any **Claim** for any **Wrongful Act** of the **Trustees** in connection with a **Fund** first made against the **Insured(s)** and first notified to ACE during the **Policy Period**.

1.4 Entity Liability

ACE shall pay on behalf of the **Association** all **Loss** which it is legally obligated to pay up to the sub-limit of liability specified in Item 5 of the Schedule for any **Claim** for any **Wrongful Act** both first made against the **Association** and notified to ACE during the **Policy Period**.

1.5 Professional Indemnity

ACE shall pay on behalf of the **Insured(s)** all **Loss** up to the sub-limit of liability specified in Item 5 of the Schedule arising from any **Claim** for a **Wrongful Act** both first made against the **Insured(s)** and notified to ACE during the **Policy Period**.

1.6 Fidelity

ACE shall indemnify the **Association** against all **Direct Financial Loss** up to the sub-limit of liability specified in Item 5 of the Schedule which is first sustained and discovered and first notified to ACE, during the **Policy Period**.

1.7 Statutory Liability

ACE shall indemnify the **Insured** for **Penalties** and **Sentences of Reparation**, which the **Insured** is legally obligated to pay, and any **Defence Costs**, up to the sub-limit of liability specified in Item 5 of the Schedule as a result of **Allegation(s)**. The **Allegation(s)** must all first be made against the **Insured** during the **Policy Period**.

1.8 Employer's Liability

ACE shall indemnify the **Insured** for **Damages** which the **Insured** is legally obligated to pay, and any **Defence Costs** which the **Insured** is legally obligated to pay up to the sub-limit of liability specified in Item 5 of the Schedule as a result of liability arising from an **Event** or **Circumstances** notified to ACE in accordance with this **Policy** during the **Policy Period**.



2. Definitions

2.1 Act(s)

means all acts of the New Zealand Parliament and any regulations or other subordinate legislation made under any of those acts.

2.2 Act of Terrorism

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

2.3 Allegation

means each separate intimation, threat or allegation that the **Insured** breached or may have breached or committed an offence under any provision of one or more **Act(s)**. The term Allegation includes any inquiry or investigation by a statutory authority or enforcement agency under any **Act**.

2.4 Association

means the entity shown in Item 1 of the Schedule to this **Policy**.

2.5 Activities

means the activities of the **Insured** as stated in Item 2 of the Schedule to this **Policy**.

2.6 Breach of Trustee Liability

means any actual alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement of the **Trustee** in connection with a **Fund**.

2.7 Circumstance

means where the **Insured** knows of an **Event** which might give rise to an **Allegation**.

2.8 Claim means:

(a) for the purpose of Insuring Clauses 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6, any notice received by the **Association**, or by the **Insured Person(s)** alleged to have committed a **Wrongful Act**, of the intention of a person or entity to hold the **Insured Person(s)** and/or the **Association** responsible for the results of any **Wrongful Act**, including any demand received by the **Insured Person(s)** and/or the **Association** for money or services naming the **Insured Person(s)** and/or the **Association** as defendant(s), or the institution of legal, arbitration or administrative proceedings against the **Insured Person(s)** and/or the **Association**.

(b) for the purpose of Insuring Clauses 1.7 and 1.8, a claim for indemnity under this **Policy** notified to ACE in accordance with this **Policy**.

2.9 Damages

mean an award of damages which the **Insured** is legally liable to pay (including the claimant's costs and expenses).

2.10 Deductible

means the amount shown in Item 5 of the Schedule to this **Policy**.

2.11 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**), which are necessary to investigate, settle, defend or appeal a **Claim** and/or **Allegation** covered by this **Policy**.



2.12 Direct Financial Loss for the purpose Insuring Clause 1.6

means direct financial loss of bearer bonds, money, coupons, bank notes, coins, currency notes, negotiable instruments or stamps sustained by the **Association** in consequence of a single act or series of related, continuous or repeated dishonest or fraudulent, malicious or illegal acts or omissions of an **Insured** acting in their capacity as an **Insured**. **Direct Financial Loss** shall not include:

- (a) salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, pensions 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 Condition 6.7;

2.13 Discovery Period

means the period of 12 months referred to in Extension 3.6 which shall run from the date this **Policy** expires.

2.14 Document

means any document, computer tape, disc or other magnetic or electronic media entrusted to the **Association** in the course of its **Activities**, but excludes:

- (a) any bearer bond, coupon, stamp, bank note, currency note or negotiable instrument; or
- (b) any document, computer tape, disc or other magnetic or electronic media owned by the **Insured** or any related person or related entity.

2.15 Employee

means any natural person who is employed by the **Association** in the ordinary course of its **Activities** and is paid by the **Association** by way of salary or wages or who is a paid or unpaid volunteer helper but who, in both circumstances perform their duties at the direction and control of the **Association**.

2.16 Employment Practice Breach

means, with respect to any past, present or prospective **Employee** of the **Association** any actual or alleged:

- (a) employment-related sexual or other unlawful harassment;
- (b) termination of employment which is against the law;
- (c) employment-related unlawful discrimination;
- (d) employment-related denial of natural justice;
- (e) false or misleading advertising or representation involving terms or conditions of employment with the **Association**;
- (f) employment-related defamation;
- (g) failure to employ, promote or grant tenure;
- (h) unfair deprivation of career opportunity;
- (i) unfair discipline or evaluation of employment performance;
- (j) failure to provide or adhere to adequate employment policies or procedures;
- (k) violation of any statute or regulation governing employment practices;
- (l) breach of employment contract;
- (m) employment-related invasion of privacy.

2.17 Event

means an unintentional and unexpected result of an act or omission, which arises directly from and has occurred in the course of the **Activities**, has occurred in its entirety after the **Retroactive Date** stated in the Schedule and which results directly in:

- (a) for the purpose of Insuring Clause 1.7, an **Allegation**
- (b) for the purpose of Insuring Clause 1.8, **Personal Injury** to an **Employee**.

2.18 Fund

means any fund shown in Item 7 of the Schedule to this **Policy**.



2.19 GST

means any liability the **Insured** may have under s5(13) of the Goods & Services Tax Act 1985.

2.20 Insured(s)

means the **Association** and/or the **Insured Person(s)**.

2.21 Insured Person(s)

means all natural persons who were, now are or shall be a **director, Officer, Office Bearer**, secretary, committee member or **Employee** of the **Association** or any other person acting on behalf of the **Association** at the direction of an **Officer** or board of directors or committee of the **Association**.

The term **Insured Person(s)** shall not include a receiver and manager, a receiver who is also not a manager, a liquidator, a trustee/administrator administering a scheme of arrangement, an official manager, an external auditor, a trustee or administrator of a superannuation scheme other than a **Trustee**.

2.22 Investigation

means any official investigation, inquiry, public examination, commission or prosecution, criminal or otherwise;

2.23 Investigator

means any independent investigator, accountant or other consultant, who does not have a conflict of interest, selected by the **Association** with the prior written consent of ACE, such consent not to be unreasonably withheld, to establish the nature and extent of any **Direct Financial Loss** sustained by the **Association**;

2.24 Loss for the purpose of Insuring Clauses 1.1, 1.2, 1.3, 1.4 and 1.6

means any damages, judgments, settlements and **Defence Costs**. **Loss** shall not include punitive or exemplary damages or fines or penalties imposed by law.

2.25 Loss of Documents

means the cost of replacing or restoring any **Document** which has been lost (and cannot be found after diligent search), damaged or destroyed except where that loss, damage or destruction relates to any computer tape, disk or other magnetic or electronic media or any data or programme contained in or on it and occurs:

- (a) as a result of exposure to any electronic or magnetic field, atmospheric conditions, heat or cold; or
- (b) when in use by, or when mounted in, any computer or electronic device unless the loss or damage results from its malfunction.

2.26 Officer and Office Bearer

means any natural person who is an employee:

- (a) who is concerned in, or takes part in, the operation of the **Association** whether or not that person holds a position of responsibility and regardless of the name given to that position; or
- (b) who makes or participates in making, decisions that affect the **Activities** of the **Association**; or
- (c) who has the capacity to affect significantly the **Association's** financial standing.

2.27 Outside Directorship

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

2.28 Outside Directorship Policy

means any policy shown in the Schedule of **Outside Directorships** attached to this **Policy**.

2.29 Outside Organisation

means any company or organisation, other than the **Association**, in which the position of director or **Officer** is held by an **Insured Person**.



2.30 Penalty

means a fine or other cash penalty (including court costs) payable by the **Insured** upon conviction of an offence under an **Act** arising out of an **Event**, but does not include any losses, damages, compensation, reinstatement costs, remedial costs, restitution of anything, reparation, expenses or taxes, rates, duties or levies. The conviction must result from a prosecution brought by a statutory authority or enforcement agency under an **Act**.

2.31 Personal Injury

means bodily injury, sickness, disease, death, disability, shock, fright, mental anguish or mental injury.

2.32 Policy means:

- (a) the Insuring Clauses, the Definitions, the Extensions, the Exclusions, the Conditions and all other terms contained herein;
- (b) the Proposal and any attachments thereto;
- (c) any Endorsement attaching to and forming part of this **Policy** either at commencement of the **Policy Period** or during the **Policy Period**.

2.33 Policy Period

means the period of time shown in Item 3 of the Schedule to this **Policy**.

2.34 Premises

means that portion of the interior building occupied by the **Association** in conducting its **Activities**.

2.35 Premium

means the **Premium** shown in Item 8 of the Schedule to this **Policy** and any additional premium shown in any Endorsement attaching to and forming part of this **Policy**.

2.36 Retroactive Date

means the date set out in Item 6 of the Schedule to this **Policy** for each respective Insuring Clause.

2.37 Sentences of Reparation

means a sentence of reparation made under the *Sentencing Act 2002* arising from a breach of HASIE.

2.38 Trustee(s) means:

- (a) all natural persons who were, are or shall be trustee(s) of a **Fund**; and
- (b) any body corporate which was, is or shall be a trustee of a **Fund**; and
- (c) all natural persons who were, are, or shall be employee(s) of any body corporate to which clause 2.38(b) applies.

2.39 Wrongful Act means:

- (a) for the purpose of Insuring Clause 1.1, any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the **Insured Person(s)** while acting in their capacity as **Insured Person(s)** of the **Association**;
- (b) for the purpose of Insuring Clause 1.2, means any actual or alleged **Employment Practice Breach**;
- (c) for the purpose of Insuring Clause 1.3, means any actual or alleged **Breach of Trustee Liability**;
- (d) for the purpose of 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 the **Association**;
- (e) for the purpose of Insuring Clause 1.5, any actual or alleged breach of a duty owed in a professional capacity arising in the course of rendering (or failing to render) services and/or advice.



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.

3.1 Liability of an Insured Person's Spouse

ACE shall also pay on behalf of the **Insured(s)** all **Loss** arising from any **Claim** both first made against the lawful spouse of any **Insured Person** and notified to ACE during the **Policy 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:

- (a) status as the lawful spouse of the **Insured Person**; 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**.

3.2 Liability of an Insured Person's Estate, Heir or Legal Representative

ACE shall also pay on behalf of the **Insured(s)** all **Loss** arising from any **Claim** both first made against the estates, heirs, legal representatives or assigns of any deceased, incompetent, insolvent or bankrupt **Insured Person** and notified to ACE during the **Policy Period**, 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**.

3.3 Advancement of Defence Costs (Applicable to Insuring Clauses 1.1, 1.2, 1.3 and 1.4 and 1.5 only)

With respect to Insuring Clauses 1.1, 1.2, 1.3 and 1.4 and 1.5 only, ACE shall also 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:

- (a) such **Defence Costs** are incurred with the written consent of ACE, such consent not to be unreasonably withheld;
- (b) 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**.

3.4 Investigations, Inquiries, Prosecutions (Criminal or Otherwise)

ACE shall also 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:

- (a) the **Investigation** is commenced during the **Policy Period**;
- (b) the **Investigation** involves an allegation that the **Insured Person** has committed a **Wrongful Act**;
- (c) such legal fees, costs and expenses are incurred with the written consent of ACE, such consent not to be unreasonably withheld;
- (d) this Extension does not cover any fines or penalties imposed by law;
- (e) this Extension does not cover wages, salaries or other remuneration of the **Insured Person(s)** or of any employee of the **Association**;
- (f) such advance payments by ACE shall be repaid to ACE by the in the event that the **Insured(s)** shall not be entitled to payment of any **Loss** or receipt of any benefit under this **Policy**.

3.5 Continuous Cover (Applicable to Insuring Clauses 1.1, 1.2, 1.3 and 1.4 only)

With respect to Insuring Clauses 1.1, 1.2, 1.3 and 1.4, and notwithstanding Exclusions 5.2 and 5.3 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 ACE Association Protector Insurance Policy issued by ACE and which is notified during the **Policy Period**, PROVIDED THAT:

- (a) ACE has been the insurer pursuant to an ACE Association Protector Insurance Policy continuously between the date when such notification should have been given and the date when notification was in fact given;
- (b) 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 Association Protector Insurance Policy which applied at the date on which such notification should have been given.



3.6 Discovery Period

- (a) If ACE refuses to renew this **Policy**, the **Association** and/or the **Insured Person(s)** may upon payment of an additional 90% 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 or for an **Allegation** arising out of an **Event** which happened in its entirety before the date of expiration of the **Policy Period**.
- (b) The right of the **Association** and/or the **Insured Person(s)** to exercise the **Discovery Period** must be by notice to ACE in writing within 30 days of expiration of the **Policy Period**.
- (c) 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.

3.7 Loss of Documents

ACE shall also indemnify the **Insured** against **Loss of Documents**, if the loss of, damage to or destruction of the **Documents**:

- (a) was first discovered by the **Insured** during the **Policy Period**; and
- (b) was first reported to ACE during the **Policy Period** or within thirty (30) days thereafter.

For the purposes of this Extension only:

- (i) the definition of **Loss** is amended throughout the **Policy** to mean **Loss of Documents**;
- (ii) Exclusion 5.9 does not apply.

3.8 Automatic Reinstatement of Limits (Applicable to Insuring Clause 1.5 only)

In the event that the each **Claim** sub-limit of liability, shown in Item 5 of the Schedule to this **Policy** is exhausted, such limit of liability will be automatically reinstated once during the **Policy Period** subject to the following:

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

3.9 Libel & Slander (Applicable to Insuring Clauses 1.1, 1.2, 1.3, 1.4 and 1.5 only)

ACE shall also pay on behalf of the **Insured(s)**, **Loss** arising from any **Claim** for libel or slander by reason of words written or spoken by the **Insured(s)**, provided such **Claim** is both first made against the **Insured(s)** and notified to ACE during the **Policy Period**.

3.10 Intellectual Property (Applicable to Insuring Clauses 1.1, 1.2, 1.3, 1.4 and 1.5 only)

ACE shall also pay on behalf of the **Insured**, **Loss** arising from any **Claim** for unintentional breach of any intellectual property right (including copyright, trademark, registered design, plagiarism, breach of confidentiality, disclosure of confidential information) except patent, by the **Insured**, provided such **Claim** is both first made against the **Insured** and notified to ACE during the **Policy Period**, and provided that no indemnity shall be afforded to any person intentionally committing, assisting or condoning such act, error or omission.



4. Optional Extension

Coverage under the following Optional Extension shall only be afforded under this **Policy** if such Optional Extension is marked as "Included" in Item 9 of the Schedule to this **Policy**. The following Optional Extension is subject to all of the terms, conditions exclusions and limitations of this **Policy**. This Extension does not increase the limit of liability unless ACE otherwise agrees in writing

4.1 Outside Directorship Cover (Applicable to Insuring Clause 1.1 only)

ACE will pay for **Loss** in connection with any **Claim** in respect of an **Outside Directorship** listed in the Schedule of **Outside Directorships** attached to this **Policy**, provided that the **Claim**:

- (a) arises from a **Wrongful Act** which occurred during the course of and prior to the **Outside Directorship** ceasing; and
- (b) is first made against the **Insured Person** during the **Policy Period**.

5. Exclusions

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 Person(s)** shall be imputed to any other **Insured Person(s)** to determine if cover is available.

5.1 Fraud or Dishonesty & Personal Profits

ACE shall not be liable to make any payment for **Loss** or for any **Claim** arising out of an **Event** based on, arising from or attributable to:

- (a) fraudulent, dishonest or criminal acts or omissions of the **Insured(s)** if such acts or omissions are found by a final adjudication of any Court to be fraudulent, dishonest or criminal. With respect to Insuring Clause 1.7 this Exclusion shall not apply to **Defence Costs** and **Penalties** incurred by any **Insured** who has not committed or condoned the deliberately dishonest or fraudulent or malicious act or omission. This Exclusion 5.1(a) shall also not apply to the cover pursuant to Insuring Clause 1.6;
- (b) any personal profit or advantage gained in fact by the **Insured(s)** to which such **Insured(s)** was not legally entitled.

5.2 Retroactive Date

ACE shall not be liable to make any payment for **Loss** or for any **Claim** arising out of an **Event** based on, arising from or attributable to any fact, matter, circumstance, act, omission or **Event** occurring or arising on or before the **Retroactive Date**.

5.3 Prior Matters

ACE shall not be liable to make any payment for **Loss** or for any **Claim** arising out of an **Allegation** based on, arising from or attributable to:

- (a) any litigation or other proceedings begun before the inception date of this **Policy**.
- (b) 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**.
- (c) 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**.

5.4 Insured versus Insured

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** brought by or on behalf of the **Insured Person(s)** or the **Association** other than any **Claim**:

- (a) arising from an **Employment Practice Breach**;
- (b) that is a derivative action brought or maintained in the name of the **Association** by any legally authorised individual or entity including any regulatory authority, provided the action is brought or maintained without the participation, solicitation, consent or assistance of any **Insured**, other than if required by law.
- (c) that is brought or maintained by any former **Insured Person(s)**;
- (d) for contribution or indemnity, if the **Claim** for contribution or indemnity results from a **Claim** which is covered under this **Policy**.



5.5 Fund Trusteeship (Not applicable to Insuring Clauses 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** brought against any person acting in the capacity as trustee or administrator of any occupational pension scheme or employment benefit programme other than a fund listed in Item 7 of the Schedule to this **Policy**. This Exclusion shall not apply to Insuring Clauses 1.7 & 1.8.

5.6 Pollution (Not applicable to Insuring Clauses 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** or for any **Claim** arising out of any **Allegation** based on, arising from or attributable to:

- (a) 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
- (b) the hazardous properties of nuclear or radioactive material.

This Exclusion shall not apply to Insuring Clauses 1.7 & 1.8.

5.7 Asbestos

ACE shall not be liable to make any payment for **Loss** or for any **Claim** arising out of any **Allegation** based on, arising from or attributable to asbestos and/or related diseases whether directly or indirectly, in whole or in part.

5.8 Bodily Injury (Not applicable to Insuring Clauses 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** for bodily injury, sickness, disease, death or emotional distress or molestation 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**. This Exclusion shall not apply to Insuring Clauses 1.7 & 1.8.

5.9 Property Damage (Not applicable to Insuring Clauses 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to damage to or destruction of any tangible property, including loss of use of such property. This Exclusion shall not apply to Insuring Clauses 1.7 & 1.8.

5.10 Contractual Undertaking

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** brought against the **Insured(s)** based on, arising from or attributable to any actual or alleged liability of the **Association** under any contract, warranty or agreement (except an express employment contract or agreement not excluded by reason of Exclusion 5.12) unless such liability would nevertheless have attached at law in the absence of such contract, warranty or agreement.

5.11 Consequential Loss

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any indirect or consequential loss of any nature, including but not limited to loss of income and to interest or dividends not realised or received by the **Association** or by any other person(s) or organisation(s) because of **Direct Financial Loss** covered under Insuring Clause 1.6.

5.12 Employment Contract Liability

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any liability assumed by the **Association** under an express employment contract or agreement unless the **Association** would have had such liability even in the absence of such contract or agreement.

5.13 Professional Services (Not applicable to Insuring Clauses 1.3, 1.5, 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** relating to or in respect of the performance of professional services for others for a fee or any act, error or omission relating thereto however this exclusion shall not apply to Insuring Clauses 1.3, 1.5, 1.7 & 1.8.



5.14 Controlling Interest

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** brought directly or derivatively by or on behalf of any entity in which any **Insured Person** or the **Association** has any controlling interest, however, this exclusion shall not apply to Insuring Clause 1.2.

5.15 Territorial Scope

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Claim** where legal action or litigation is brought in a Court of law constituted in the United States of America or Canada or arising out of the activities of the **Association** in the United States of America or Canada.

5.16 Fund Contributions

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any liability of the **Insured(s)** for or in respect of a failure to collect, pay or maintain any contributions to any **Fund**.

5.17 Medical (Not applicable to Insuring Clauses 1.7 & 1.8)

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Loss** caused by, arising out of or in any way connected with any medical treatment, advice and/or services and/or scientific or medical research. This Exclusion shall not apply to Insuring Clauses 1.7 & 1.8.

5.18 Legal

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Loss** caused by, arising out of or in any way connected with any legal, financial and/or investment services or advice.

5.19 Terrorism

ACE shall not be liable to make any payment for **Loss** based on, arising from or attributable to any **Loss** caused by, arising out of or in any way connected death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with:

- (a) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss; and/or
- (b) any action taken in controlling preventing, suppressing or in any way relating to any **Act of Terrorism**.

5.20 Reciprocal Enforcement of Judgments

ACE shall not be liable to make any payments for **Loss** based on, arising from or attributable to any liability of the **Insured(s)** arising under the Reciprocal Enforcement of Judgments Act 1934.

5.21 Insolvency

ACE shall not be liable to make any payment for **Loss** based on, arising from, or in any way connected with the financial failure, bankruptcy, provisional liquidation, insolvency, appointment of receiver or administrator, entry into a scheme of arrangement, statutory protection, stopping the payment of debts or any occurrence of a similar nature under the laws of any jurisdiction, of the **Insured Organisation**.

5.22 Fidelity Exclusions

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

- (a) breach of the Fair Trading Act 1986, or of any Regulations made under that Act.
- (b) **Direct Financial Loss** which results from loss, damage or destruction to any **Premises**, or to any property situated on the **Premises** other than bearer bonds, money, coupons, bank notes, coins, currency notes, negotiable instruments or stamps otherwise covered pursuant to Insuring Clause 1.6.
- (c) **Direct Financial Loss** based on, arising from or attributable to the voluntary handing over of bearer bonds, money, coupons, bank notes, coins, currency notes, negotiable instruments or stamps or other property as part of any purchase or exchange, unless such **Direct Financial Loss** is caused by an **Employee**;
- (d) **Direct Financial Loss**, the proof of which is solely dependent on a profit and loss computation or comparison, or on a comparison of inventory records with an actual physical count.
- (e) **Direct Financial Loss** caused or contributed to by an **Employee** or **Insured**, after the **Association** knew or ought to have known that the **Employee** or **Insured** had been fraudulent or dishonest (whether before or after the **Association** employed them).



- (f) **Direct Financial Loss** caused or contributed to by an **Employee** or **Insured** who was not employed in connection with the **Association** when the act, error or omission which caused or contributed to the **Direct Financial Loss** occurred.
- (g) **Direct Financial Loss** which is consequential loss, including but not limited to:
 - (i) Loss of potential income or profit;
 - (ii) Liability under law or contract.
- (h) **Direct Financial Loss** which results from any total or partial non-payment or default pursuant to or with respect to any:
 - (i) account, invoice or agreement relating to a debt;
 - (ii) rental or lease agreement;
 - (iii) loan;
 - (iv) hire purchase or credit agreement.
- (i) **Direct Financial Loss** which results from the accessing and dissemination of any confidential information.
- (j) **Direct Financial Loss** based on, arising from or attributable to the transfer of funds to an account maintained at any financial institution which the **Association** and the financial institution have not agreed in advance of such transfer is an account approved by the **Association** to receive the transfer of funds.
- (k) **Direct Financial Loss** sustained from an account maintained by the **Association** at any financial institution in circumstances in which dual signatories and dual passwords of the **Association** are not used.
- (l) **Direct financial Loss** attributable to any individual who can open new accounts from commencement to completion without referral to others.
- (m) **Direct Financial Loss** caused directly or indirectly by the following:
 - (i) the **Association** failing to maintain an account in the name of the **Association** for any money or failing to have such account audited by a qualified independent contractor at least once each calendar year;
 - (ii) any cheques that are not countersigned;
 - (iii) any bank fund transfers or wired funds not duly authorised;
 - (iv) the **Insured** failing to take all reasonable precautions (including supervision, controls, checks and audits) to prevent any **Direct Financial Loss**.

5.23 Statutory Liability Exclusions

With respect to Insuring Clause 1.7 only, ACE shall not be liable to make payment for any **Claim**:

- (a) arising out of any **Allegation** that the **Insured** has breached, may have breached or committed an offence under one or more of the following: Arms Act 1983, Aviation Crimes Act 1972, Crimes Act 1961, Proceeds of Crime Act 1991, Summary Offences Act 1981, Transport Act 1962, Transport (Vehicle and Driver Registration and Licensing) Act 1986; and any other Act specially stated as being excluded in the Schedule;
- (b) any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the **Insured** pursuant to Sections 78, 80, 80E, 82, 83, 84A, 86 or 89 (3)(b) of the Commerce Act 1986.
- (c) for a penalty arising out of any **Allegation** that the **Insured** has breached or committed an offence under an Act if it is illegal for ACE to indemnify the **Insured** in relation to the **Penalty**.
- (d) for **Defence Costs** arising from appealing, or otherwise challenging, an infringement notice given under HASIE.
- (e) arising out of any deliberate breach of, disregard for, resistance to, or failure to comply with the provisions of, or any notice given or requirement made under, any of **the Acts**.
- (f) for the costs of complying with or remedying any breach of any of **the Acts**.
- (g) arising out of any threatened or actual civil claim or civil proceedings.
- (h) arising out of any **Allegation** relating to acts or omissions which do not directly arise out of the **Activities**.
- (i) arising out of an **Event** which takes place outside the territory of New Zealand.
- (j) arising out of any judgement:
 - (i) entered in a court outside New Zealand or by an arbitrator outside New Zealand; or
 - (ii) which does not apply New Zealand law.
- (k) arising out of any **Allegation** directly or indirectly caused by or contributed to by or arising from:
 - (i) ionising radiation's or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.



- (ii) the radioactive toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of an explosive nuclear assembly.
- (l) arising out of the engagement by the **Insured** of any contractor to dispose of or handle materials unless the **Insured** has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner.
- (m) for an **Allegation** or **Circumstance** which was not notified in accordance with this **Policy**.

5.24 Employers Liability Exclusions

With respect to Insuring Clause 1.8 only, ACE shall not be liable to make payment for any **Damages** or **Defence Costs**:

- (a) arising out of **Personal Injury** for which cover to any extent is provided by the Injury Prevention Rehabilitation and Compensation Act 2001 ("IPRCA") or would have been provided by IPRCA but for the **Insured** being an exempt employer under IPRCA.
- (b) arising out of any **Allegation** made against the **Insured** for acts or omissions which do not directly arise out of the **Activities**.
- (c) arising out of an **Event** which takes place outside the territory of New Zealand.
- (d) arising out of any judgment:
 - (i) entered in a court outside New Zealand or by an arbitrator outside New Zealand; or
 - (ii) which does not apply the law of New Zealand.
- (e) arising out of any **Allegation** directly or indirectly caused by or contributed to by or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, monetary or usurped power or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.
- (f) arising out of any **Allegation** directly or indirectly caused by or contributed to by or arising from:
 - (i) ionising radiation's or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - (ii) the radioactive toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of an explosive nuclear assembly.
- (g) arising out of the engagement by the **Insured** of any contractor to dispose of or handle materials unless the **Insured** has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner.
- (h) for a liability assumed in a contract unless that liability would be implied by law.
- (i) arising out of any termination of employment or unlawful discrimination against an employee.

5.25 Outside Directorship Exclusions

With respect to the Optional Extension only, ACE will not pay for:

- (a) any **Loss** in connection with any **Claim** made by or against any other director, officer or employee of any **Outside Organisation** in which an **Outside Directorship** is held;
- (b) that part of any **Loss** for which cover is available pursuant to any policy of insurance arranged by or on behalf of any **Outside Organisation** or pursuant to any **Outside Directorship Policy** listed in the **Outside Directorship Schedule** attached to this **Policy**;
- (c) that part of any **Loss** in connection with any **Claim** against an **Insured Person** for which indemnity is available from the **Outside Organisation** in which an **Outside Directorship** is held; and/or
- (d) any **Loss** in connection with any **Claim** made by or on behalf of the **Insured Persons**, the **Outside Organisation** or any directors, officers, company secretaries or employees of the **Outside Organisation**, except in respect of:
 - (i) any **Claim** based on, arising out of or attributable to an **Employment Practice Breach**;
 - (ii) 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 brought or maintained without the participation, solicitation, consent or assistance of any **Insured Persons**, the **Outside Organisation** or any directors, **Officers**, company secretaries or employees of the **Outside Organisation** except when such participation, solicitation or assistance is required by law.



6. Conditions

6.1 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 **Association** and the **Insured Person(s)** agree to use their best efforts to agree upon a fair and proper allocation of defence costs, settlements and damages between ACE, the **Association** and the **Insured Person(s)**.

6.2 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 **Association** or the **Insured Person(s)**, ACE shall maintain cover until the expiry date of the **Policy Period** for individuals who are **Insured Person(s)** under this **Policy** who can 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.

6.3 Claims/Circumstances/Investigations Notification

- (a) The **Association** and the **Insured Person(s)** shall give written notice to ACE as soon as practicable of:
 - (i) for the purpose of Insuring Clauses 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 any **Claim** first made during the **Policy Period** and for the purpose of Insuring Clauses 1.7 and 1.8 every **Allegation** or **Event**; if a **Claim** is made pursuant to Insuring Clauses 1.7 or 1.8, then any subsequent **Allegation** arising out of the original **Event** which gave rise to the **Claim** will be treated as having been notified under this **Policy**;
 - (ii) 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, **Allegations**, facts and circumstances of which the **Association** and/or the **Insured Person(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.
- (b) The **Association** and the **Insured Person(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 the Claims Manager, ACE Insurance Limited, 345 Queen Street, Auckland or by facsimile to (64 9) 303 1909.

6.4 Claims - Defence & Settlement

- (a) Neither the **Association** nor the **Insured Person(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.
- (b) 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.
- (c) 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.
- (d) ACE and the **Insured(s)** shall not be required to contest any **Claim** or **Allegation** unless a Senior Counsel (to be mutually agreed upon by ACE and the **Insured(s)**) shall advise that the **Claim** or **Allegation** should be contested or admitted. The Senior Counsel shall take into consideration the economics of the **Claim** or **Allegation**, the damages and costs which are likely to be recovered by the plaintiff, the **Defence Costs** which will be incurred in contesting the **Claim** or **Allegation**, the prospects of the **Insured(s)** successfully defending the **Claim** or **Allegation** and in respect of Insuring Clauses 1.7 the likely **Sentence of Reparation**. The costs of obtaining such opinion from the Senior Counsel shall be paid by ACE as part of the **Defence Costs**.
- (e) Should the Senior Counsel advise that in all the circumstances the **Claim** or **Allegation** should not be contested but should be settled, then either:
 - (i) settlement of the **Claim** or **Allegation** must be attempted; or
 - (ii) the **Insured(s)** may elect to contest the **Claim** or **Allegation**.
- (f) Where settlement is attempted in accordance with counsel's recommendation but settlement is unsuccessful, ACE will continue to indemnify the **Insured(s)** subject to the terms, conditions, exclusions and limitations of this **Policy**. Should the **Insured(s)** elect not to attempt settlement in accordance with counsel's recommendations and elect to contest the **Claim** or **Allegation**, ACE's liability shall be limited to the settlement



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amount recommended by Senior Counsel plus the **Defence Costs** incurred up to the date that settlement was recommended by Senior Counsel.

6.5 Confidentiality

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

6.6 Deductible

- (a) The **Association** shall pay the **Deductible** for all **Loss** resulting from each **Claim**. ACE shall have no obligation to pay **Loss** until the **Insured Person(s)** or the **Association** have incurred **Loss** in the amount of the **Deductible** if applicable, except that, if the **Association** 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**.
- (b) 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:
 - (i) when the earliest **Claim** was first made, or
 - (ii) when the earliest circumstance giving rise to a **Claim** was notified.
- (c) The **Deductible** shall apply to all **Loss** for which advancement or indemnification by the **Association** is required or permissible under company indemnification laws or agreements regardless of whether or not the **Association** actually advances or indemnifies the **Insured Person(s)** for such **Loss**.

6.7 Direct Financial Loss Special Conditions

With respect to Insuring Clause 1.6:

- (a) No indemnity shall be afforded to any person committing or permitting (whether knowingly or recklessly) the dishonest or fraudulent, malicious or illegal act or omission;
- (b) **Direct Financial Loss** is deemed to be discovered at the time at which an officer or member of the **Insured** first becomes aware of facts which a reasonable person would assume to be a loss covered by this Insuring Clause;
- (c) Conduct of or facts known to and knowledge possessed by one **Insured** will be imputed to all **Insured(s)**;
- (d) ACE shall deduct from any monies paid pursuant to this Insuring Clause:
 - (i) the cash value of any sum which the **Association** would have paid to the fraudulent, dishonest, criminal or malicious **Employee** or **Insured Person** if they had not been fraudulent; and
 - (ii) the cash value of any property or benefit that the **Employee, Insured Person** or **Association** holds as a consequence of the fraudulent, dishonest, criminal or malicious conduct (if ACE can do so by law).

6.8 Investigation of Direct Financial Loss

- (a) In the event of an actual or suspected **Direct Financial Loss** sustained by the **Association** to which Insuring Clause 1.6 may apply, the **Investigator** shall:
 - (i) investigate the circumstances giving rise to any **Direct Financial Loss**, and;
 - (ii) determine the amount of any **Direct Financial Loss**, and;
 - (iii) provide recommendations to the **Association** and to ACE as to how a similar **Direct Financial Loss** can be prevented in the future, and;
 - (iv) provide a written report in duplicate to the **Association** and to ACE with respect to the circumstances giving rise to any **Direct Financial Loss** and the amount of any **Direct Financial Loss** which, to the extent of the circumstances and the quantum of any **Direct Financial Loss** only, will be binding on the **Association** and ACE.
- (b) In the event that any **Direct Financial Loss** is covered under Insuring Clause 1.6 ACE will pay the reasonable costs and expenses of the **Investigator**.
- (c) If any **Direct Financial Loss** is not covered under Insuring Clause 1.6 ACE and the **Association** will pay the reasonable costs and expenses of the **Investigator** equally.



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- (d) The **Deductible** does not apply to any costs and expenses of the Investigator paid by ACE, and any such costs and expenses paid by ACE forms part of and are not in addition to the limit of liability shown in Item 4 of the Schedule to this **Policy**.

6.9 Limit of Liability

- (a) The amount shown in Item 4 of the Schedule to this **Policy** is ACE's maximum aggregate liability:
- (i) for the purpose of Insuring Clauses 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 all **Loss** including **Defence Costs**, arising from all **Claims** first made during the **Policy Period** and the **Discovery Period** if applicable;
 - (ii) for all **Direct Financial Loss** sustained and discovered by the **Association** during the **Policy Period** or, if applicable, during the **Discovery Period** however for Insuring Clause 1.6 this amount shall be the sub-limit of liability as set out in that Insuring Clause which forms part of and is not in addition to the aggregate limit of liability;
 - (iii) for all costs and expenses of the **Investigator** payable pursuant to Condition 6.7;
 - (iv) for the purpose of Insuring Clauses 1.7 and 1.8 all **Claims** made during the **Policy Period**. If the sub-limit of liability is inadequate to pay all **Claims** made in one **Policy Period**, ACE will pay the types of loss in the following order:
 - **Damages or Penalties or Sentences of Reparation** imposed on the **Association**
 - **Defence Costs** of the **Association**
 - **Damages or Penalties** imposed on any **Employees**
 - **Defence Costs** of **Employees**
 - (v) all legal fees, costs and expenses incurred for legal representation at any **Investigation**.
- (b) 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:
- (i) when the earliest **Claim** was first made, or
 - (ii) when the earliest circumstance giving rise to a **Claim** was notified.

6.10 Loss Mitigation

- (a) The **Association** and the **Insured Person(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**.
- (b) With respect to Insuring Clause 1.6, the **Insured(s)** shall take all reasonable steps and precautions to prevent any **Direct Financial Loss** including performing all reasonable supervision, controls, checks and audits.
- (c) With respect to Insuring Clauses 1.7 and 1.8 the **Insured(s)** must at its own expense, use diligence and do and assist in doing all things which are reasonably practicable to avoid or reduce any **Claim** and take all reasonable precautions to comply with all **Acts**.
- (d) With respect to Insuring Clauses 1.7 and 1.8 where the **Insured's** breach of or non-compliance with Condition 6.10(a), (b) and (c) results in prejudice to the handling and/or settlement of any **Allegation** or claim for **Damages** which in all other respects qualifies to be indemnified under this **Policy**, then the indemnity afforded by this **Policy** in respect of such **Allegation** or claim for **Damages** shall be reduced to such sum as would have been payable by ACE in the absence of that prejudice.

6.11 Policy Interpretation

- (a) This **Policy** shall be governed by and interpreted in accordance with the laws of New Zealand in which this **Policy** was issued.
- (b) Any disputes regarding the interpretation of this **Policy** shall be submitted to the exclusive jurisdiction of the courts of New Zealand.

6.12 Proposal Form Disclosure and Severability

- (a) 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.
- (b) 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)**.



6.13 Subrogation

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

6.14 Goods and Services Tax

ACE shall pay to the **Association** and any other **Insured Person**. Any New Zealand **GST** that the **Association** and any other **Insured Person** is liable to pay as a result of receiving any payment under this **Policy**. However ACE shall only cover the **Association** and any other **Insured Person** to the extent that ACE is entitled to obtain a refund for the tax. This cover is in addition to ACE's maximum aggregate liability referred to in Condition 6.9.

6.15 Other Insurance

If any **Loss** arising from a **Claim** is insured under any other **Policy**, whether prior or current, then to the extent permitted by law, this **Policy**, subject to its limitations, conditions, provisions and other terms, will only cover **Loss** to the extent that the amount of such **Loss** is in excess of the amount of such other insurance. This Condition does not apply to such other insurance that is written only as specific excess insurance over the limits of liability provided in this **Policy**.