



ace insurance

ACE Insurance Limited

ELITE PROFESSIONAL INDEMNITY
INSURANCE POLICY

POLICY NUMBER: 01PI537058

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

1. **Insuring Clause**

1.1 **Cover**

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

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

2. **Limitation of Liability and Excess**

2.1 **Limit of Liability**

- (a) Subject to any **Sub Limit of Liability**, the limit of **ACE's** liability for **Loss** including **Defence Costs** arising from any one **Claim** is the sum specified in Item e of the **Schedule**.
- (b) The limit of **ACE's** liability in the aggregate for:
 - (i) **Loss** including **Defence Costs** arising from all **Claims**; and
 - (ii) all claims by the **Insured** against **ACE** under Automatic Extension 3.2 (Attendance at Enquiry), Automatic Extension 3.4 (Complaints to any ASIC Approved External Dispute Resolution Body), 3.12 (Loss of Documents) and Optional Extension 4.1 (Employment Practice Breach),

is the sum specified in Item f of the **Schedule**.

2.2 **Excess**

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

2.3 **Multiple Claims and Related Conduct**

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

- (a) one act, error or omission; or
- (b) acts, errors or omissions which are the same or related to each other,

shall be regarded as one **Claim**.

3. **Automatic Extensions**

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

3.1 **84 Months Run Off Cover for an Insured Entity**

In the event that the **Insured** entity ceases to exist or operate during the **Period of Insurance**, the coverage provided under the **Policy** for such **Insured** entity shall be extended for 84 months from the date that the entity ceases to exist or operate, provided that such coverage shall only apply in respect of a **Claim** that:

- (a) is first made against an **Insured** entity during the 84 month extension referred to above and which is notified to **ACE** during the 84 month extension referred to above; and

- (b) arises from an act, error or omission by an **Insured** entity occurring between:
 - (i) the Retroactive Date; and
 - (ii) the date the **Insured** entity ceased to exist or operate.

Cover provided by this extension shall only apply:

- (a) whilst **ACE** is the insurer of the Surety & General Brokers Pty Ltd Mortgage Industry Association of Australia (MIAA) or the Mortgage & Finance Association of Australia (MFAA) Professional Indemnity Scheme; and
- (b) where the **Insured** has notified **ACE** before the expiration of the **Period of Insurance** that the **Insured** has ceased to exist or operate.

This extension shall not apply if such **Insured** has:

- (a) placed its professional indemnity insurance with another insurer;
- (b) at any time notified **ACE** of any **Claim** or **Circumstances**; or
- (c) at any time been the subject of disciplinary action by any regulatory body or membership association.

3.2 **Attendance at Enquiry**

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

- (a) the enquiry investigation or examination is commenced during the **Period of Insurance**; and
- (b) such legal costs and expenses are incurred with the written consent of **ACE**; and
- (c) **ACE** shall be entitled, at its sole discretion, to appoint legal representation to represent the **Insured** in the enquiry, investigation or examination; and
- (d) this Extension 3.2 does not cover wages, salaries or other remuneration of the **Insured**; and
- (e) this Extension 3.2 does not cover any fines, penalties (including civil penalties) or any order for the payment of monetary compensation; and
- (f) such payments of legal costs and expenses by **ACE** shall be repaid to **ACE** in the event that the **Insured** shall not be entitled to payment of any **Loss** or receipt of any benefit under this **Policy**; and
- (g) the aggregate liability of **ACE** in respect of legal costs and expenses covered under this Automatic Extension 3.2 shall not exceed \$50,000; and
- (h) the **Insured** shall bear the amount specified in Item g of the **Schedule** in respect of each and every **Claim** as its excess under this Automatic Extension 3.2.

3.3 **Automatic Reinstatement of Limit of Liability**

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

- (a) such reinstatement will apply only in respect of **Claims** made or **Circumstances** notified during the **Period of Insurance** but after the reinstatement which are totally unrelated to **Claims** or **Circumstances** already notified to **ACE** or any other insurer; and
- (b) such reinstatement is limited in total to an amount equal to the limit of liability set out in Item e of the **Schedule**; and
- (c) such reinstatement will only apply after the total aggregate limit of liability available under the **Policy** is exhausted; and

- (d) such reinstatement will only apply in excess of the total aggregate indemnity available under any other policy or policies that apply in excess of this **Policy**; and
- (e) notwithstanding such reinstatement, the **Policy** is subject to the limit of liability as set out in Item e of the **Schedule**, at all times; and
- (f) the maximum amount payable under this **Policy** in respect of any one **Period of Insurance** is limited to three times the limit of liability shown in Item f of the **Schedule**.

3.4 **Complaints to any ASIC Approved External Dispute Resolution Body**

ACE shall pay on behalf of the **Insured** any **Loss** arising from any complaint to any ASIC approved External Dispute resolution body both first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**.

For the purpose of this Extension only, a sub-limit of A\$280,000 applies. This sub-limit forms part of and is not in addition to the limits of liability referred to in Clause 2.1 of this **Policy**.

3.5 **Consultants, Contractors, Subcontractors and Agents**

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

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

This Automatic Extension 3.5 neither affords coverage to any consultant, contractor, subcontractor or agent of the **Insured** nor makes any such person or entity an **Insured**.

3.6 **Continuous Cover**

Notwithstanding Exclusion 5.20 (Prior Matters), **ACE** will pay for **Loss** arising from any **Claim** both first made against the **Insured** and notified to **ACE** during the **Period of Insurance** arising from a **Prior Known Fact**, provided that:

- (a) the **Claim** would be covered under this **Policy** but for the operation of Exclusion 5.20 (Prior Matters); and
- (b) the **Insured** has maintained with **ACE** and without interruption, professional indemnity insurance from the **Date of Continuous Cover** up until the date this **Policy** commenced; and
- (c) the **Insured** would have been indemnified under the professional indemnity liability insurance policy in force at the relevant time if the **Prior Known Fact** had been notified to **ACE** when the **Insured** first became aware of it; and
- (d) neither the **Claim** nor the **Prior Known Fact** has been notified under any other policy; and
- (e) there has been no fraudulent non disclosure or fraudulent misrepresentation in respect of such **Prior Known Fact**; and
- (f) cover under this Automatic Extension 3.6 will be in accordance with the terms, conditions, exclusions and limitations (including the schedule, the excess, the insuring clause, the exclusions, the definitions and the limits and sub limits of liability) of the **ACE** policy in force at the time the **Insured** first became aware of, or should reasonably have become aware of the **Prior Known Fact**.

3.7 **Defamation**

- (a) **ACE** shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for libel or slander by the **Insured** in the conduct of the **Business**, provided that:
- (b) such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and

- (c) such **Claim** arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (d) the **Insured** did not intend to publish the libel or slander with express malice.

3.8 Estates and Legal Representatives

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

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

3.9 Fraud & Dishonesty

Notwithstanding Exclusion 5.10 (Fraud, Dishonesty, & Reckless Conduct), **ACE** shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** against the **Insured** for civil liability the result of a dishonest, fraudulent, malicious or criminal act or omission of any **Principal** (other than a sole practitioner) or **Employee** of the **Firm** (including consultant, contractor, subcontractor or agent of the **Insured**) in the conduct of the **Business**, provided that:

- (a) such **Claim**:
 - (i) is first made against the **Insured** during the **Period of Insurance** and notified to **ACE** during the **Period of Insurance**; and
 - (ii) arises from a dishonest, fraudulent, malicious or criminal act or omission of the **Principal** or **Employee** occurring on or after the **Retroactive Date**;
- (b) coverage under this Automatic Extension 3.9 shall not be provided:
 - (i) to any **Insured** committing, participating in or condoning such dishonest, fraudulent, malicious or criminal act or omission; or
 - (ii) for any **Loss of Money**.

3.10 Intellectual Property Infringement

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

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

3.11 Joint Venture Liability

ACE shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** against the **Insured** for civil liability the result of a breach of professional duty committed by the **Insured** in the conduct of the **Business** as a participant in a **Joint Venture** provided that:

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

- (c) any indemnity afforded under this Automatic Extension 3.11 shall be limited to the **Insured's** proportion of any liability incurred by such **Joint Venture**.

This Automatic Extension 3.11 neither affords coverage to any person or entity with whom the **Insured** is in **Joint Venture** nor makes any such person or entity an **Insured**.

3.12 **Loss of Documents**

- (a) Notwithstanding Exclusion 5.2 (Bodily Injury & Property Damage), **ACE** shall pay on behalf of the **Insured** the reasonable and necessary costs, charges and expenses in replacing or restoring **Documents** for which the **Insured** is legally responsible in the conduct of the **Business** and which have been destroyed, damaged or lost and cannot be found after diligent search, provided that:
 - (b) the loss of, damage to or destruction of such **Documents** was:
 - (i) sustained and first discovered by the **Insured** during the **Period of Insurance**; and
 - (ii) reported to **ACE** during the **Period of Insurance**; and
 - (c) the claim for such costs, charges and expenses is supported by satisfactory proof of loss (including bills and accounts) which shall be subject to approval by a competent person nominated by **ACE** with the **Insured's** approval; and
 - (d) this Automatic Extension 3.12 shall not provide coverage for any costs, charges or expenses directly or indirectly relating to:
 - (i) destroyed, damaged or lost **Electronic Data**;
 - (ii) any **Documents** which have been destroyed, damaged or lost as a result of wear, tear or other gradually operating causes; and
 - (e) if the **Insured** has other valid insurance for recovery of the costs, charges or expenses covered by this Automatic Extension 3.12, then to the extent permitted by the Insurance Contracts Act 1984, the cover afforded by this Automatic Extension 3.12 shall be excess over such other insurance.
 - (f) the aggregate liability of **ACE** in respect of all losses covered under this Automatic Extension 3.12 shall not exceed \$500,000.

3.13 **Newly Acquired or Created Subsidiaries**

- (a) **ACE** agrees to extend the definition of the **Insured** (definition 8.16) to automatically include any **Subsidiary** which is acquired or created by the **Firm** during the **Period of Insurance** for a period of up to twenty one (21) days (but never beyond the **Period of Insurance**) from the date of acquisition or creation of the **Subsidiary** by the **Firm**, provided that:
 - (i) the **Subsidiary** has total gross assets which are less than 20% of the total gross assets of the **Firm**; and
 - (ii) the **Subsidiary** is not incorporated outside Australia or New Zealand; and
 - (iii) the **Subsidiary** does not undertake any business or activities in the USA or Canada; and
 - (iv) this Automatic Extension 3.13 will only apply in respect of **Claims** arising from an act, error or omission occurring after the date of acquisition or creation of the **Subsidiary** by the **Firm**.
- (b) this Automatic Extension 3.13 does not in any way obligate **ACE** to offer cover to such **Subsidiary** beyond the period referred to in clause 3.13 (a), and **ACE** may do so on such terms and conditions and at such **Premium** as it may decide in its absolute discretion.

3.14 **Trade Practices Act**

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

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

4. OPTIONAL EXTENSION

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

4.1 Employment Practices Breach

ACE shall pay to or on behalf of the **Insured**, **Loss** arising from any **Claim** for a **Wrongful Act** by the **Insured**, provided the **Claim** is first made against the **Insured** during the **Period of Insurance** or an applicable Run Off Period.

For the purposes of this Optional Extension 4.1 (Employment Practice Breach) only, the following definitions apply:

Claim means:

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

against an **Insured** for a **Wrongful Act** or series of related **Wrongful Acts** by the **Insured**. It does not include an **investigation**, enquiry or examination

Employment Practice Breach means any actual or alleged:

- (a) employment-related;
- (b) sexual or other unlawful harassment (including bullying);
- (c) unlawful discrimination;
- (d) denial of natural justice;
- (e) defamation;
- (f) invasion of privacy;
- (g) unlawful termination of employment;
- (h) false or misleading advertising or representation involving terms or conditions of employment;
- (i) failure to employ, promote or grant tenure;
- (j) unfair deprivation of career opportunity;
- (k) unfair discipline or evaluation of employment performance;
- (l) failure to provide or adhere to adequate employment policies or procedures;
- (m) violation of any Federal, State or Local statute or regulation governing employment practices; or
- (n) breach of employment contract
- (o) with respect to any natural person who was, now is or becomes during the **Period of Insurance** an employee of an **Insured** entity.

Employment Related Benefits means:

- (a) any non-monetary benefits; or
- (b) any stock, shares, stock or share options or any similar right available under any employee plan; or
- (c) any severance or redundancy entitlements, statutory entitlements (including paid or unpaid leave entitlements); or
- (d) any bonus, incentive payment or loans (including interest); or
- (e) any amount the **Insured** is required to pay in accordance with the terms of an employment contract, including but not limited to in respect of an allegedly unfair contract, or any employment-related compensation or benefits.

Loss means:

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

Loss does not include:

- (a) aggravated, punitive or exemplary damages;
- (b) fines or penalties imposed by law (including civil penalties); or
- (c) any matters which are deemed uninsurable under the law; or
- (d) taxes or
- (e) any multiplied portion of any damages awarded
- (f) Employment Related Benefits;

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** which is an **Employment Practice Breach** and which is wholly committed by the Insured after the retroactive date and before the expiry of the Period of Insurance.

The aggregate liability of ACE in respect of all Loss covered by this Optional Extension 4.1 is AU\$50,000. The limit of liability under this endorsement is part of and not in addition to the **Limit of Liability** in Item e of the Schedule.

For the purposes of this Optional Extension 4.1 only, the following **Deductible** will apply for each **Claim** AU\$5,000.

Extensions, Exclusions and Conditions in the Policy

Extension 3.6 (Continuous Cover) applies to afford cover to the **Insured** under this endorsement and the references in extension 3.6(b) and (c) to professional indemnity insurance are deemed to be references to insurance for the **Insured** in respect of **Claims** based on or arising from an **Employment Practice Breach**.

Extension 3.1 (84 Months Run Off Cover for an Insured Entity) applies to afford cover to the **Insured** under this endorsement.

Where, but for the operation of one or more of the following exclusions, the **Insured** would be covered for a **Claim** by virtue of this automatic extension to the **Policy**, **ACE** agrees that such exclusion will be of no effect:

- (a) Exclusion 5.2 'Bodily Injury & Property Damage';
- (b) Exclusion 5.17 'Obligations to Employees'; and
- (c) Exclusion 5.25, 'Related Persons and Entities' - sub clause 5.25(a) only.

5. Exclusions

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

5.1 **Assumed Liabilities & Duties**

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

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

5.2 **Bodily Injury & Property Damage**

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

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

5.3 **Discretionary Investment**

Loss directly or indirectly caused by, arising out of or in any way connected with the investment of funds by the **Insured** or any representative of the **Insured**.

5.4 **Directors & Officers and Prospectus Liability**

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

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

5.5 **Failure of Counterparty**

Loss directly or indirectly caused by, arising out of or in any way connected with the insolvency, bankruptcy, liquidation, receivership or administration of, or the failure to pay or suspension of payment by, any bank or banking firm, insurance company, investment company, investment banker or any broker or dealer in securities or commodities, or other persons or organisations of a similar nature, other than the **Firm**.

5.6 **Failure to Disclose Commissions**

Loss directly or indirectly caused by, arising out of or in any way connected with any failure by the **Insured** or any representative of the **Insured** to disclose to clients any commissions, fees and /or other benefits received in connection with making a recommendation.

5.7 **Failure to Hold or Maintain Licence**

Loss directly or indirectly caused by, arising out of or in any way connected with any the failure by any **Insured** to hold or to continue to hold any authorisation, licence or approval required by law.

5.8 **Financial Failure & Trading Debts**

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

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

5.9 **Financial Planning Advice**

Loss directly or indirectly caused by, arising out of or in any way connected with the rendering of professional services in connection with any financial planning business and the provision of advice in connection with such services or financial products.

5.10 **Fraud, Dishonesty & Reckless Conduct**

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

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

5.11 **Insurance Intermediaries**

Loss directly or indirectly caused by, arising out of or in any way connected with the rendering of professional services of or in connection with any insurance broker or insurance agency business including but not limited to the negotiation of insurance contracts, the collection or remittance of premiums, the rendering of loss control services, or the provision of advice by the **Insured** in connection with such services.

This exclusion does not apply with respect to:

- (a) the provision of mortgage insurance through an insurance agency business; or
- (b) the identification and referring by the **Insured** to a third party insurance provider.

5.12 **Investment Fluctuations**

Loss directly or indirectly caused by, arising out of or in any way connected with the depreciation or failure to appreciate in value of any investment as the result of any actual or alleged guarantee or warranty provided by or on behalf of the **Insured** (including representative of the **Insured**) as to the performance of any such investments.

5.13 **Jurisdictional & Geographical Limits**

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

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

5.14 **Loss of Money**

Loss of Money.

5.15 **Margin Lending Advice**

Loss directly or indirectly caused by, arising out of or in any way connected with any representation or advice provided by the **Insured** or any other person for whose acts the **Insured** is legally responsible with regard to margin lending and/or margin lending products.

5.16 **Maintenance of Insurance**

Loss directly or indirectly caused by, arising out of or in any way connected with the effecting of or failure to effect, the maintenance of or failure to maintain, insurance.

5.17 **Obligations to Employees**

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

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

5.18 **Occupier's Liabilities**

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

5.19 **Pollution, Asbestos & Radioactivity**

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

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

5.20 **Prior Matters**

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

- (a) **Claim** first made prior to the **Period of Insurance**;
- (b) **Claim** or **Circumstances** notified, in whole or part, to **ACE** or any other insurer prior to the **Period of Insurance**; or
- (c) **Claim** or **Circumstances** of which the **Insured** was aware or ought reasonably to have been aware, prior to the **Period of Insurance**.

5.21 **Products Liability**

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

5.22 **Property Development & Construction Exclusion**

Loss directly or indirectly caused by, arising out of or in any way connected with any property development or construction, including but not limited to:

- (a) any failure to procure or maintain any financing for the payment of contract works or services in connection therewith; or
- (b) any failure to effect and/or maintain insurance; or
- (c) any error or omission by the **Insured** in estimates of probable construction cost or cost estimates being exceeded; or
- (d) any error or omission by the **Insured** involving estimations of time; or
- (e) any error, act or omission by any sub-consultant of the **Insured**; or

(f) the insolvency of any of the parties involved in any project.

5.23 **Property Valuation**

Loss directly or indirectly caused by, arising out of or in any way connected with any property valuation by the **Insured** or any other person for whose acts the **Insured** is legally responsible.

5.24 **Real Estate Agents**

Loss directly or indirectly caused by, arising out of or in any way connected with the rendering or failure to render professional services in connection with any real estate agency or auctioneer business conducted by the **Insured**, including but not limited to the purchase, sale, rental, leasing or valuation of real property or the provision of advice in connection with such services.

5.25 **Related Persons and Entities**

Claim brought or maintained by or on behalf of:

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

5.26 **Tax Implications Advice**

Loss directly or indirectly caused by, arising out of or in any way connected with any representation or advice provided by the **Insured** or any other person for whose acts the **Insured** is legally responsible with regards to tax and/or tax implications of any investment.

5.27 **War & Terrorism**

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

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

6. **General Conditions**

6.1 **Alteration to Risk**

The **Insured** must give **ACE** written notice as soon as is reasonably practicable after becoming aware of any actual or proposed alteration affecting **ACE's** risk under this **Policy** including any material change in the nature of the professional services provided by the **Firm** (including any proposal for the **Business** to cease with or merge with, or be taken over or acquired by, another entity) or any act of insolvency or bankruptcy of any **Insured**.

6.2 **Cancellation**

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

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

6.3 **Governing Law**

This **Policy** is governed by, and interpreted in accordance with, the laws of the Commonwealth of Australia and the State or Territory of the office of **ACE** from which the **Policy** was issued. Disputes

relating to interpretation of this **Policy** must be submitted to the exclusive jurisdiction of the Courts of that State or Territory.

6.4 Severability and Non-Imputation

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

- (a) failure by one person or entity to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth); or
- (b) misrepresentation by one person or entity to **ACE** before this **Policy** commences; or
- (c) failure by one person or entity to comply with any terms of conditions of this **Policy** does not prejudice the right of any other **Insured** to indemnity under this **Policy**.

However, this clause only applies if:

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

7. Claims Conditions

7.1 Notification of Claims

- (a) As soon as practicable, the **Insured** must give **ACE** notice in writing of any **Claim** first made against any **Insured** during the **Period of Insurance**. The **Insured** must give notices under this clause to **ACE**:
C/- The Financial Lines Claims Manager
ACE Insurance Limited
28-34 O'Connell Street
SYDNEY NSW 2000 Australia
- (b) All notifications under this **Policy** must include the following information:
 - (i) a specific description of the demand or assertion made against the **Insured** including the date any **Claim** was made; and
 - (ii) the details of any parties involved; and
 - (iii) a copy of any written demand or assertion and any document commencing proceedings against the **Insured**.

7.2 Disclosure of Information

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

7.3 Conduct of Proceedings

- (a) With respect to any **Claim** notified under this **Policy**, it is the duty of the **Insured**, not **ACE**, to defend any **Claim** made against an **Insured**. **ACE**, however, may take over and conduct (in the name of any **Insured**) the defence of any **Claim** in respect of which **ACE** is or maybe liable to indemnify such **Insured**.
- (b) An **Insured** must not incur any **Defence Costs** without the prior written consent of **ACE**, which shall not be unreasonably withheld. **ACE** shall not be liable to indemnify any **Insured** for any **Defence Costs** unless **ACE** provides its prior written consent to the incurrence of such costs.
- (c) The **Insured** must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any actual or potential **Loss** arising from any actual or possible **Claim** under this **Policy**.
- (d) An **Insured** must not settle or make any admission, offer, payment or otherwise assume any contractual obligation in relation to any **Claim** (including incurring any **Defence Costs**) in respect

of which **ACE** is, or may be, liable to indemnify any **Insured**, without the prior written consent of **ACE**. **ACE** is not liable to indemnify any **Insured** for any settlement, admission, offer, payment or assumed obligation unless **ACE** provides its prior written consent.

- (e) Each **Insured** must, at their own expense, give **ACE** and any investigators or legal representatives appointed by **ACE** all information they reasonably require, and full co-operation and assistance in the conduct of the investigation (including for the purpose of enabling **ACE** to determine its liability to provide indemnity under this **Policy**), defence, settlement, avoidance or reduction of any actual or possible **Claim** or any proceedings.

7.4 Disputes as to Defence & Settlement of Claims

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

7.5 Subrogation

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

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

8. Definitions & Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) headings are merely descriptive and not to aid interpretation; and
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (d) references to an amount of money are references to that amount in Australian dollars; and
- (e) bolded words used in this **Policy** have the meanings set out in this Section.

8.2 **ACE** means

ACE Insurance Limited ABN 23 001 642 020.

8.3 **Act of Terrorism** means

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

8.4 **Bodily Injury** means

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

8.5 **Business** means

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

8.6 **Circumstances** means

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

8.7 **Claim** means

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

For the purposes of Automatic Extension 3.4 (Complaints to any ASIC Approved External Dispute Resolution Body) only, **Claim** is a written complaint arising out of the **Firm's Business** made to the ASIC Approved External Dispute Resolution Body and which is accepted by the Scheme Manager approved by the ASIC Approved External Dispute Resolution Body.

8.8 **Date of Continuous Cover** means

the date from which the **Insured** has maintained with **ACE**, continuously and without interruption until the date this **Policy** commenced, professional indemnity insurance in respect of the **Business**.

8.9 **Defence Costs** means

legal costs and disbursements and related expenses reasonably incurred in:

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

incurred by:

- (i) the **Insured** with the written consent of **ACE** after reporting the **Claim** to **ACE**; or
- (ii) **ACE** after it has assumed conduct of any such proceedings.

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

8.10 **Documents** means

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

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

8.11 **Employee** means

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

8.12 **Electronic Data** means

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

8.13 **Excess** means

the amount specified in Item g of the **Schedule** other than in respect of any other excess specified in any endorsement to the **Policy**, when such amount shall be any other amount specified in that endorsement.

8.14 **Financial Interest** means

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

8.15 **Firm** means

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

8.16 **Insured** means

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

8.17 **Joint Venture** means

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

8.18 **Loss** means

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

Loss does not include:

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

For the purposes of Automatic Extension 3.4 (Complaints to any ASIC Approved External Dispute Resolution Body) only, **Loss** means the aggregate of all amounts payable by the **Insured** in respect of a **Claim**, including determinations, legal costs and expenses awarded against an **Insured** by the ASIC Approved External Dispute Resolution Body, and also includes **Defence Costs**.

8.19 **Loss of Money** means

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

- (a) belonging to the **Insured**; or

- (b) for which the **Insured** is legally liable.
- 8.20 **Mortgage Consultant** means
an Accredited Mortgage Consultant as deemed by the Mortgage Industry Association of Australasia (MIAA) or the Mortgage & Finance Association of Australia (MFAA), or the Finance Brokers Association of Australia (FBAA).
- 8.21 **Period of Insurance** means
the period specified in Item d of the **Schedule**.
- 8.22 **Policy** means
the contract of insurance between **ACE** and the **Insured** which comprises this **Policy** wording, the **Proposal**, the **Schedule** and any document issued by **ACE** varying the policy coverage.
- 8.23 **Pollutants** means
any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 8.24 **Premium** means
the sum specified in Item i of the **Schedule** as the premium or as otherwise agreed, and any additional premium shown in any endorsement attaching to and forming part of this **Policy**.
- 8.25 **Principal** means, where the **Firm** is or was:
- (a) a body corporate - each director and the company secretary of that body corporate and each **Employee** with the right to participate in any distribution of the profits of that body corporate; and
 - (b) a partnership - each partner of that firm and each person held out as a partner; and
 - (c) a sole practitioner - that practitioner,
- and includes each former principal and each person who becomes a principal during the **Period of Insurance**.
- 8.26 **Prior Known Fact**
means any fact which:
- (a) an **Insured** was aware of, after the **Date of Continuous Cover** but prior to the commencement of the **Period of Insurance**; or
 - (b) a reasonable **Insured** would have considered at any time after the **Date of Continuous Cover** but prior to the commencement of the **Period of Insurance**;
- might result in any **Loss** arising from any **Claim** for civil liability the result of a breach of professional duty by the **Insured** in the conduct of the **Business**.
- 8.27 **Proposal** means
the written proposal and any supplementary proposal including any statements and information contained therein and any material provided by the **Insured** that is relied upon by **ACE** in issuing cover under this **Policy**.
- 8.28 **Relative** means
- (a) any spouse, domestic partner or companion; or
 - (b) any parent, or parent of the spouse, domestic partner or companion; or
 - (c) any sibling or child.
- 8.29 **Retroactive Date** means:
the date specified in Item h of the **Schedule**.

8.30 **Schedule** means

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

8.31 **Senior Counsel** means

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

8.32 **Sub Limit of Liability** means

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

8.33 **Subsidiary** means

any entity:

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

ACE Insurance Limited

Privacy Statement

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

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

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

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

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

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

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