

Commercial Crime Insurance

Policy Wording



Contents

Welcome to Zurich

- About Zurich 2
- Duty of Disclosure..... 2
- Non-disclosure or Misrepresentation 2
- Our contract with you..... 2

Commercial Crime Insurance – Policy Wording

- 1. Insuring Clauses..... 3
 - 1.1 Internal Crime..... 3
 - 1.2 External Crime..... 3
 - 1.3 Electronic Crime 3
- 2. Extensions of Cover 3
- 3. Changes in Risk..... 6
- 4. Definitions..... 7
- 5. Exclusions..... 16
- 6. Discovery, Notification and Basis of Settlement 18
- 7. General Conditions..... 20

Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know; or
- that we indicate to you that we do not want to know.

Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure, we may treat your policy as if it never existed.

Our contract with you

This Policy is a contract of insurance between the *policyholder* and Zurich and contains all the details of the cover that we provide.

The Policy is made up of:

- the Policy Wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *proposal* which is the information provided to us when applying for insurance cover;
- the most current Policy Schedule issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the Policy Schedule are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Commercial Crime Insurance – Policy Wording

In consideration of the payment of the premium, and in reliance upon the statements made in the *proposal* and subject to the terms of this Policy (including any endorsement hereto), coverage under this Policy is afforded solely for *financial loss* first sustained by the *company* and where *discovery* first occurs during the *period of insurance* or the *extended reporting period* (if applicable) and notified to us as required by this Policy.

1. Insuring Clauses

1.1 Internal Crime

We will indemnify the *company* for *financial loss*, first *discovered* during the *period of insurance* or the *extended reporting period*, if applicable, which results directly from a *wrongful dishonest act* of an *employee*, including any person acting in collusion with such *employee*.

1.2 External Crime

We will indemnify the *company* for *financial loss*, first *discovered* during the *period of insurance* or the *extended reporting period*, if applicable, which results directly from a fraudulent, dishonest, malicious or criminal act of:

1.2.1 *theft*;

1.2.2 *forgery* of any cheque, draft, promissory note or bill of exchange given or received by the *company*;

1.2.3 *fraudulent alteration*;

1.2.4 *counterfeiting*; or

1.2.5 *crime* not otherwise insured or excluded under this Insuring Clause where the third party obtained improper financial gain (which shall in no event include salary, fees, commission, bonuses or any similar employee benefit earned in the normal course of employment, including salary increases, promotions, profit sharing or other emoluments) and intended to cause a loss to the *company* and is found guilty and convicted by a final judgment in a recognised criminal court of law of such criminally sanctioned act, committed or caused by a third party, other than any *employee* or any person acting in collusion with such *employee*.

1.3 Electronic Crime

We will indemnify the *company* for *financial loss*, first *discovered* during the *period of insurance* or the *extended reporting period*, if applicable, which results directly from *computer fraud* committed, or caused by a third party, other than any *employee* or any person acting in collusion with such *employee*.

2. Extensions of Cover

Subject to all the terms, conditions, exclusions and limitations of this Policy, cover is extended as follows:

2.1 Fraudulent impersonation

We shall indemnify the *company* for *financial loss* which results directly from the *company* having, in good faith:

2.1.1 amended the account or payment details of a client, *vendor* or service provider in reliance upon a written or telephonic instruction; or

2.1.2 transferred money or *securities* from its own accounts to a third party in reliance upon a *transfer instruction*;

purportedly issued by:

(i) the *company*;

(ii) an *employee* or a *director or officer* of the *company*;

(iii) a *financial institution*;

(iv) a client of the *company*;

(v) a *vendor*; or

(vi) any other person with the authority to provide such instruction or *transfer instruction*;

but which instruction or *transfer instruction* proves to have been fraudulently issued by an imposter without the knowledge or consent of the entity or natural person named in (i) to (vi) above.

As a condition precedent to our liability under this Policy, before acting upon any such instruction or *transfer instruction* and prior to the transfer of any money or *securities* the *company* shall confirm the validity of such instruction or *transfer instruction*. Such confirmation must include a prearranged procedure in which the *company* either (1) verifies the authenticity and accuracy of the instruction or *transfer instruction* by means of a call back or similar procedure to a predetermined telephone number; or (2) any other verification procedure declared in the *proposal*; and the *company* preserved a contemporaneous written record of this verification along with all elements of the fraudulent instruction or *transfer instruction*.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.2 Loss mitigation

We shall indemnify the *company* for any *mitigation costs* incurred during the *period of insurance* provided that:

- 2.2.1 as a condition precedent to our liability under the Policy for *mitigation costs* notification of the relevant peril, fraud, act, event or omission is made to and accepted by us pursuant to Section 6.1;
- 2.2.2 if the peril, fraud, act, event or omission notified in clause 2.2.1 above were to give rise to direct financial loss of the *company*, such loss would constitute *financial loss* otherwise covered under this Policy;
- 2.2.3 as a condition precedent to our liability under the Policy for *mitigation costs* and before incurring any *mitigation costs*, the *company* demonstrates to us the reasonableness and necessity of the proposed actions and costs to mitigate or avoid *financial loss*, and receives our express prior consent for such *mitigation costs*; and
- 2.2.4 as a condition precedent to our liability under this Policy for *mitigation costs*, we shall be entitled to associate fully with the *company* in relation to the proposed actions before they are undertaken and shall be kept fully updated on the potential exposure to *financial loss*.

The burden of proving that the potential direct financial loss would constitute *financial loss* that would be covered under this Policy shall rest with the *company*.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.3 Care, Custody and Control

We shall indemnify the *company* for *financial loss* resulting directly from the loss of *property*, money or *securities* belonging to any other natural person or organisation, but which is under the care, custody or control of the *company* and for which the *company* is legally liable.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.4 Interest

We shall indemnify the *company* for the amount of any interest receivable or payable by a *company*, resulting directly from a *financial loss* covered under this Policy, provided that the Insurer's liability for such interest receivable or payable is calculated by applying the average of the Reserve Bank of New Zealand base rate in force between the time of sustaining such *financial loss* and the date of *discovery* of such *financial loss*.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.5 Costs, Fees and Expenses

We shall indemnify the *company* for its reasonable and necessary costs, expenses and fees, including legal fees, incurred with our prior consent:

2.5.1 in the defence of any demand, claim, suit or legal proceeding against the *company*; or

2.5.2 in conducting any proceedings for indemnity, contribution or recovery;

which result directly from a *financial loss* covered under this Policy, and provided always that:

- (i) such costs, expenses and fees are not recoverable from any other party; and
- (ii) there is no duty upon us to advance any costs, expenses or fees to the *company* prior to the conclusion of the demand claim, suit or proceeding.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

We shall not be liable under this Extension for:

- (a) internal or overhead expenses of the *company*;
- (b) salary or remuneration of any *employee*, partner, *director or officer* of the *company*; or
- (c) any cost of implementing any award, directive or recommendation of a regulatory authority.

2.6 Investigation Costs

We shall indemnify the *company* for its reasonable and necessary costs, expenses and fees, incurred with our prior consent, after *discovery* of a *financial loss* covered under this Policy, for establishing the amount of such *financial loss*.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

We shall not be liable under this Extension for:

- (i) internal or overhead expenses of the *company*; or
- (ii) salary or remuneration of any *employee*, partner, *director or officer* of the *company*.

2.7 Verification and Reconstitution Costs

We shall indemnify the *company* for its reasonable and necessary costs, expenses and fees, incurred with our prior consent, for the verification, restoration or reconstitution or removal of electronic computer programs or *electronic data*, or removal of computer codes or *software*, stored within the *company's computer system*, or which the *company* owns, holds or is responsible for, resulting from a *computer fraud* that is covered under Insuring Clause 1.3 or an *impersonation fraud* covered under Extension 2.1.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.8 Contractual penalties

We shall indemnify the *company* for any contractual penalty assumed by and enforced against the *company* under a written contract, resulting directly from a *financial loss* covered under this Policy.

The cover provided under this Extension shall be subject to both the applicable *retention* and *sub-limit of liability* specified in the *schedule*.

2.9 Extended reporting period

2.9.1 Cancellation or Non-Renewal

In the event this Policy is cancelled for any reason other than non-payment of premium, or this Policy is not renewed either by us or the *policyholder*, the *policyholder* will be entitled to an *extended reporting period* as follows:

- (i) automatically for thirty (30) days at no additional premium; or
- (ii) for the period of time specified in the *schedule*, subject to the *policyholder* making a request for such *extended reporting period* no later than thirty (30) days after the expiry of the *period of insurance* and paying the applicable required additional premium.

For purposes of this section, when we are providing renewal cover on terms which are more restrictive than this Policy, including in respect of *limit of liability* and *retention*, this does not constitute non-renewal or non-replacement.

2.9.2 Change in Control

In the event of a *change in control*, the *policyholder* does not have the right to elect an *extended reporting period* as set out under 2.9.1, but shall be entitled to request an offer from us for an *extended reporting period*, subject to the *policyholder* making a request for such *extended reporting period* no later than thirty (30) days after the *change in control*, unless a period extension is otherwise granted through a different provision of this Policy, and paying the applicable required premium.

This Extension shall not apply to *mitigation costs*.

An *extended reporting period* shall terminate immediately upon its expiry or the effective date of either of the following events (whichever occurs first):

- (i) the renewal of this Policy by us; or
- (ii) the placement of any crime contract of insurance issued by any other insurer which effectively replaces or renews the coverage afforded by this Policy, either in whole or in part.

The additional premium for any *extended reporting period* shall be deemed fully earned at the inception of the *extended reporting period*.

3. Changes in Risk

3.1 Changes in Subsidiary or Liquidation of Plan

If an entity ceases to be a *subsidiary* during the *period of insurance*, or a *plan* is sold or liquidated before or during the *period of insurance*, cover for any *financial loss* of the *company* sustained or incurred in relation to or in connection with such *subsidiary* or *plan* shall continue until termination of this Policy, provided always that:

- 3.1.1 such *financial loss* results from perils, fraud, acts or events committed, perpetrated, occurred or taking place prior to the date of such cessation, sale or liquidation;
- 3.1.2 such *financial loss* is first *discovered* during the *period of insurance*; and
- 3.1.3 only the *policyholder* (or any *subsidiary* or *plan*, not the relevant *subsidiary* or *plan*) remains legally or contractually liable for such *financial loss*.

3.2 New Subsidiary or Plan

Cover under this Policy is automatically extended to any *subsidiary* or *plan* which the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, first acquires or creates after the inception of this Policy, unless such:

3.2.1 *subsidiary*:

- (a) has total assets for the last complete accounting period prior to the acquisition which are greater than twenty (20) per cent of the total consolidated assets of the *policyholder* declared at the inception of this *period of insurance* or reported in the latest audited annual report; or

- (b) has total *employees* which exceed fifteen (15) per cent the total consolidated *employees* of the *policyholder* at inception of the *period of insurance*; or
- (c) is a *financial institution*;

3.2.2 *plan* has total assets which are greater than twenty (20) per cent of the total consolidated assets of the *plans* insured under this Policy at inception of the *period of insurance*;

3.2.3 *subsidiary* or *plan* is incorporated, formed or based in the United States of America, or any state, territory or possession thereof.

If a newly acquired or created *subsidiary* or *plan* falls into 3.2.1 to 3.2.3 above, such entity will be covered under this Policy for a period of thirty (30) days from the date the *policyholder* either directly or indirectly first acquired or created such entity, or until the end of the *period of insurance*, whichever occurs first, provided the *policyholder* pays any additional premium required by us in connection with such new entity.

We may at our discretion extend coverage beyond the thirty (30) days period if during the thirty (30) day period, the *policyholder*:

- (i) requests an Extension of this Policy for such *subsidiary* or *plan* in writing to us;
- (ii) gives us sufficient details to permit us to assess and evaluate the potential increase in exposure; and
- (iii) agrees to any additional premium and amendments to the Policy required by us, relating to such new *subsidiary* or *plan*.

Unless otherwise agreed in writing and attached as an endorsement to this Policy, cover under this Policy for such *subsidiary* or *plan* first acquired or created after the inception of this Policy shall only apply for *financial loss* resulting directly from perils, fraud, acts or events committed, perpetrated, occurred or taking place after such *subsidiary* or *plan* is first acquired or created and whilst remaining a *subsidiary* or *plan* of the *policyholder*.

3.3 Change in Control

The coverage provided by this Policy shall only apply in respect of perils, fraud, acts or events, committed, perpetrated, occurred or taking place, prior to the effective date of a *change in control*.

As a condition precedent to our liability under this Policy, the *policyholder* shall give written notice to us of such *change in control* as soon as reasonably practicable, however no later than thirty (30) days after the *change in control*.

Notwithstanding the effect on cover caused by such *change in control* there shall be no entitlement to cancellation of this Policy by any party (other than for non-payment of premium) and the entire premium for this Policy shall be deemed to have been fully earned as of the date of such *change in control*.

4. Definitions

When used in this Policy, its *schedule* and its endorsements the following definitions shall apply:

4.1 Breach costs

breach costs mean all fees, costs, charges, and expenses incurred by the *company* (whether voluntarily or otherwise) for the purposes of retaining any one or more of an accountant, attorney, lawyer, forensics firm, payment card industry forensics investigator, public relations consultant, and other third party to:

- 4.1.1 conduct computer forensic analysis to investigate the *company's computer system*;
- 4.1.2 determine indemnification obligations under any written contract with respect to the acts of a service provider to the *company*;
- 4.1.3 determine if the *company* is obligated to notify any regulatory authority or potentially affected individuals;

- 4.1.4 effect compliance with any *privacy regulation*;
- 4.1.5 notify potentially affected individuals or applicable regulatory agencies and establish new account numbers for the *company's* potentially affected individuals;
- 4.1.6 plan, implement, execute and manage a public relations campaign to attempt to counter or minimise any actual or anticipated adverse effects of negative publicity, or to attempt to protect or restore the *company's* business reputation in response to negative publicity;
- 4.1.7 provide credit and identification monitoring services, identification restoration services, and identification theft insurance, provided we shall have no obligation to apply for or furnish such insurance, for potentially affected individuals; or
- 4.1.8 provide call centre to handle enquiries from potentially affected individuals; in connection with or responding to a *security event*.

4.2 Change in Control

change in control means:

- 4.2.1 any event wherein any person, entity or group:
 - (i) acquires more than 50% of the *policyholder's* share capital;
 - (ii) acquires the majority of the voting rights in the *policyholder*;
 - (iii) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
 - (iv) assumes control pursuant to a written agreement with other shareholders over the majority of the voting rights in the *policyholder*;
 - (v) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or
 - (vi) is appointed as a trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction) for the *policyholder*, or the *policyholder* becomes a debtor-in-possession (or equivalent status in the applicable jurisdiction).
- 4.2.2 the nationalisation of the *policyholder* by the taking of the *company's* assets directly or indirectly, in whole or in substantial part, into state or government ownership;
- 4.2.3 any government, quasi-government or government agency (including the International Monetary Fund), other regulatory agency, body or funding entity or financial stability fund:
 - (i) assuming the voting control of a shareholders' meeting of the *policyholder*;
 - (ii) dismissing the Board of Directors of the *policyholder*;
 - (iii) appointing a management committee of the *policyholder*;
 - (iv) taking over the operations of the *policyholder* either in part or in whole, or disposing of such an undertaking, either in part or in whole.

4.3 Company

company means:

- 4.3.1 the *policyholder*;
- 4.3.2 any *subsidiary*; or
- 4.3.3 any *plan*.

4.4 Computer fraud

computer fraud means the intentional unlawful, unauthorised, dishonest, fraudulent or malicious misuse or manipulation of the *company's computer system* (either directly or indirectly via another *computer system*) through the introduction of data or computer instructions directly into, or modification or deletion of data or computer instructions within the *company's computer system*, by a third party, upon which the *company* has acted or relied, and provided that such introduction, modification or deletion results in the loss of *property*, money or *securities* or the transfer of money or *securities* by the *company* to a third party.

4.5 Computer system

computer system means computer hardware and *software* and the *electronic data* stored thereon including associated input and output devices, data storage devices, networking equipment, components, firmware and electronic back up facilities including systems available through the internet, intranets, extranets or virtual private networks.

Solely with respect to the *company's computer system*, this includes hardware and *software*, and the *electronic data* stored thereon, which:

- 4.5.1 the *company* leases, owns or operates;
- 4.5.2 the *company* leases or owns, but is operated by a third party pursuant to a written contract for and on behalf of the *company*; or
- 4.5.3 is owned by the *company's employees* and operated by them on behalf of the *company* for the purpose of obtaining remote access to the *company's computer system* or otherwise operated pursuant to the *company's* 'bring your own device' policy;

to provide services to the *company*.

4.6 Counterfeit or Counterfeiting

counterfeit or *counterfeiting* means the imitation of fiat currency or fiat coin which, because of the quality of the imitation, the *company* believes it is the authentic currency or coin. Fictitious currency or coin which merely contain fraudulent misrepresentation are not *counterfeit*.

4.7 Director or Officer

director or officer means any natural person who is a past, present or future director or officer duly elected or appointed as a director, including a management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor, or equivalent, of the *company*, including a non-executive director or independent director of the *company*.

4.8 Discovered or Discovery

discovered or *discovery* means when a *responsible officer* first has knowledge of any peril, fraud, act, event, facts or matters which would cause such *responsible officer* to reasonably foresee that a *financial loss* covered by this Policy is likely to have been or to be incurred even though the exact amount or details of such *financial loss*, act, peril, event, facts or matters are not known at the time of discovery. Discovery by any *responsible officer* shall constitute discovery by every *company*.

4.9 Electronic communications system

electronic communications system means systems which permit the digital transmission of instructions, messages, information or payments, including:

- 4.9.1 electronic communication operations by Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Clearing House Automated Payment System (CHAPS), the funds transfer system for the transfer of preauthorised recurring debits and credits of an Automated Clearing House Association which is a member of the National Automated Clearing House Association and similar automated communication systems;

4.9.2 telephone banking communications system which provides clients of the *company* with access to the *company's computer system* via an automated touch tone telephone service and which require the use of *tested* code (including but not limited to a PIN number) in order to effect any banking transactions; or

4.9.3 *tested* telex and *tested* telefacsimile.

Electronic communications system does not mean automated teller machines or any systems which operate automated teller machines or point of sale terminals, including any shared networks or facilities for said system in which the *company* participates.

4.10 Electronic data

electronic data means information stored or transmitted in digital format usable in a *computer system*. *Electronic data* does not include *software* or cryptographic or digital currency or token of any kind, digital assets functioning or intended to function as a medium of exchange, or cryptographic key material providing access to digital currency systems.

4.11 Employee

employee means:

- 4.11.1 a natural person who was, is or during the *period of insurance* becomes a paid employee (full time, part-time or temporary) in the regular service of the *company* and in the ordinary course of the *company's* business, and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct and is under the direct control and supervision of such *company*;
- 4.11.2 a natural person retained by a *company* to perform professional financial services, accounting, data processing of cheques, payroll or computing services to, for or on behalf of the *company* under a written contract for services, and outsourced to such natural person or entity by the *company*;
- 4.11.3 a natural person seconded to the *company*, or guest student pursuing studies or duties or any person engaged in work experience or on a training scheme with the *company* while working under their direct control and supervision;
- 4.11.4 a natural person trustee, fiduciary, administrator or officer of any *plan* but not in circumstances where and to the extent that such person is acting in the course of discharging or performing their trustee, fiduciary, administrator or officer role;
- 4.11.5 a natural person who is an ex-employee of the *company* for a period not exceeding 60 days following the termination of their employment with the *company*, other than when their employment is terminated as a result of a *wrongful dishonest act*; or
- 4.11.6 any natural person whose identity the *company* is unable to discover, but where the evidence proves beyond reasonable doubt was a person referred in 4.11.1 to 4.11.5 above, whose *wrongful dishonest act* caused a *financial loss* under this Policy.

Employee does not mean:

- (i) a *director or officer* of the *company*, unless when:
 - (a) performing acts within the scope of the usual duties of an employee providing services to or for the *company* under a contract of employment and under the direct control and supervision of such *company*; or
 - (b) while acting as a member of a committee duly elected or appointed by resolution of the board of directors of the *company* to perform specific services, or otherwise directed by a written decision or instruction of the board of directors, to perform specific acts or services, as distinguished from general directorial acts, on behalf of the *company* and working under the direct control and supervision of the *company*;
- (ii) any partner in a *company*;
- (iii) any external auditor, external accountant, broker, investment adviser or investment manager, factor, commission merchant, consignee, contractor, other agent, representative or equivalent thereof.

4.12 Extended reporting period

extended reporting period means period of time specified in the *schedule*, immediately following the termination of the *period of insurance*, during which written notice may be given to us of *financial loss* first *discovered* during such *extended reporting period* and resulting directly from any peril, fraud, act or event covered under this Policy, and committed, perpetrated or occurred prior to the expiry date of the *period of insurance* or the date of termination or non-renewal of this Policy.

4.13 Extortion

extortion means the surrender of *property*, money or *securities* of the *company* away from the *premises* in response to demands of persons and as a result of a threat communicated to the *company*:

4.13.1 to destroy or cause physical damage to the tangible property (including *computer systems*) owned by the *company* or for which the *company* is legally liable;

4.13.2 to introduce *malware* into the *computer system* of the *company*;

4.13.3 to sell, disclose, disseminate or divulge confidential security codes, computer programs or *electronic data* to another person or party;

4.13.4 to destroy, corrupt, alter, encrypt or otherwise make unavailable computer programs or *electronic data* which are stored within a *computer system* of the *company* by causing a computer program or *electronic data* to be dishonestly, fraudulently, maliciously or criminally input, modified, corrupted or deleted;

4.13.5 to deny access to a *computer system* or *electronic communications system* of the *company*;

4.13.6 to cause the *company* to transfer, pay or deliver *property*, money or *securities* by reason of having gained unauthorised access to a *computer system* of the *company*.

4.14 Financial institution

financial institution means any bank, credit institution, financial institution, finance company, any type of investment fund or undertaking for collective investment in securities, investment firm, asset management company, fund manager, fund administrator, custodian, central securities depository, investment trust, savings and loan association, building society, credit union, stockbroker, insurance or reinsurance company (other than a captive owned by the *policyholder*), stock exchange, investment exchange, clearing house, securities or insurance underwriter, or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

4.15 Financial instrument

financial instrument means cheques, drafts or similar written promises, orders or directions to pay a certain sum of money that are made, drawn by or drawn upon a *company* or by anyone acting or purporting to be acting as a *company's* agent.

4.16 Financial loss

financial loss means direct financial loss sustained by the *company* as a result of any single peril, fraud, act, event or omission (or related series of perils, frauds, acts, events or omissions) for which coverage is provided under this Policy. *Financial loss* shall include:

4.16.1 *mitigation costs*;

4.16.2 interests for which coverage is provided under Extension 2.4;

4.16.3 costs, fees and expenses covered under Extensions 2.5, 2.6 and 2.7;

4.16.4 contractual penalties for which coverage is provided under Extension 2.8; or

4.16.5 in respect of Insuring Clause 1.1 compensatory damages for the direct *financial loss* sustained by a client of the *company* and for which the *company* is held legally liable.

Financial loss does not include:

- (i) fines, penalties or damages of any type, except for direct compensatory damages arising out of a *financial loss* covered under and as specifically set out in this Policy;
- (ii) salaries, fees, commissions, bonuses, promotions, profit sharing or similar employee benefits earned in the normal course of employment, however, it does include that part of bonuses, commissions or profit sharing paid to an *employee* for a specific transaction with which such *employee* was involved and in respect of which that *employee* had committed a *wrongful dishonest act* covered under this Policy;
- (iii) the *theft* or loss of confidential information, including customer information, other than the damage, destruction or alteration of *electronic data* resulting from a *computer fraud* covered under Insuring Clause 1.3;
- (iv) *breach costs*;
- (v) the amount of any payment made as a result of *extortion*; or
- (vi) any loss arising from the *company* owning, trading in, or being responsible for the custodianship of, any crypto-assets including, without limitation, any crypto-currencies and non-currency crypto-assets such as tokens.

4.17 Forged or Forgery

forged or forgery means bearing the forged signature or endorsing of the name of another genuine person or a copy of said person's signature without the authority of that person and with the intent to deceive in consequence of which the *company* has acted or transferred funds or goods, but does not mean the signing or endorsing, in whole or in part, of one's own name, in any capacity, for any purpose. Mechanically or electronically produced or reproduced signatures are treated the same as handwritten signatures.

4.18 Fraudulently altered or Fraudulent alteration

fraudulently altered or fraudulent alteration means a material alteration to any *financial instrument* for a fraudulent or dishonest purpose by a person other than the person who was authorised to prepare or to sign such *financial instrument*.

4.19 Impersonation fraud

impersonation fraud means the *company* or a *financial institution* being deceived as to the identity of a third party and amending the account or payment details of a client, *vendor* or service provider in reliance upon a written or telephonic instruction, or acting or relying upon a *transfer instruction* from that third party, resulting in the transfer of *property*, money or *securities*.

4.20 Limit of liability

limit of liability means the Limit of Liability stated in the *schedule*.

4.21 Loan

loan means:

- 4.21.1 any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a mortgage or a lease, made by or obtained from the *company*; or
- 4.21.2 any note, invoice, account, agreement, receivables or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the *company*, including the purchase, discounting or other acquisition of accounts or invoices; or
- 4.21.3 any overdraft or similar payments made or withdrawals from a client's account involving items which are not paid for any reason; or
- 4.21.4 a guarantee.

4.22 Malware

malware means any unauthorised, corrupting, or harmful software, code or program specifically designed to:

4.22.1 erase or corrupt *electronic data*;

4.22.2 damage or disrupt any network or *computer system*; or

4.22.3 circumvent any security product or service,

including, but not limited to, computer viruses, trojan horses, keystroke loggers, cookies, spyware, adware, worms, ransomware and logic bombs.

4.23 Mitigation costs

mitigation costs mean the reasonable and necessary fees or direct costs or expenses incurred by the *company*, with our prior consent, following *discovery* first occurring during the *period of insurance* of a covered peril, fraud, act, event or omission in order to mitigate, minimise, prevent or avoid the *company's* exposure to actual or potential *financial loss* that would otherwise be covered under this Policy.

Mitigation costs do not include *breach costs* or payments made as a result of *extortion*. Furthermore, we shall not be liable for:

- (i) internal or overhead expenses of any *company*, other than those involved in taking immediate action to correct, prevent, limit or mitigate its exposure to a covered *financial loss*;
- (ii) the remuneration of any *employee*, the costs of their time or any other costs, profits or overheads of any *company*;
- (iii) any increase in the liability of or the *financial loss* of the *company* arising from taking such actions;
- (iv) any payment which exceeds the coverage provided under this Policy; or
- (v) the amount of any applicable *retention*.

4.24 Period of insurance

period of insurance means the Period of Insurance stated in the *schedule* and any extension thereof agreed by us.

4.25 Plan

plan means any superannuation fund, employee benefit, pension, welfare benefit, share option or share saver plan or charitable fund or foundation maintained by the *policyholder* or *subsidiary* for the benefit of the past, present and or future *employees* or their respective beneficiaries on or after the inception date of this Policy provided that they are specifically listed as insured *plan* specified in of the *schedule*.

4.26 Policyholder

policyholder means the legal entity designated in the *schedule*.

4.27 Pollutants

pollutants means any air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mould, mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but not any fungi intended by the *company* for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials.

4.28 Premises

premises means any interior portion of any building owned or occupied by the *company* in which they conduct their business and perform professional financial services.

4.29 Privacy regulation

privacy regulation means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of personally identifiable financial, medical or other sensitive information, or any other legislation, regulation or by-law associated with identity theft or privacy.

4.30 Property

property means tangible property of the *company* other than money or *securities*.

Property does not include cryptographic or digital currencies or tokens of any kind, digital assets functioning or intended to function as a medium of exchange, or cryptographic key material providing access to digital currency systems.

4.31 Proposal

proposal means any information and/or statements or materials supplied to us including any application form completed and signed by the *policyholder* and any attachments thereto.

4.32 Responsible Officer

responsible officer means any natural person who has been, now is, or shall become a partner, *director or officer*, general counsel, head of legal, compliance officer, departmental director, internal auditor, risk manager, insurance manager, head of information and data security, trustee, or equivalent of any *company*, who is not in collusion with any *employee* in respect of *financial loss* which may be covered under Insuring Clause 1.1.

4.33 Retention

retention means the applicable amounts specified in the *schedule*.

4.34 Schedule

schedule means the Schedule attaching to and forming part of the Policy, including any *schedule* substituted for the original *schedule*.

4.35 Securities

securities means any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or *property*.

Securities does not include *property*, money or cryptographic or digital currency or token of any kind, digital assets functioning or intended to function as a medium of exchange, or cryptographic key material providing access to digital currency systems.

4.36 Security event

security event means:

4.36.1 the unauthorised access to;

4.36.2 physical *theft* by a person other than an *employee* of;

4.36.3 introduction of *malware* into; or

4.36.4 denial of service attack upon,

the *company's computer system* causing a breach of network security.

4.37 Software

software means operations and applications, codes and programs by which *electronic data* is electronically collected, transmitted, processed, stored or received, provided always that *software* does not include *electronic data*.

4.38 Sub-limit of liability

sub-limit of liability means our *limit of liability* under this Policy for certain covers and Extensions and which is within and forms part of, and is not in addition to, the *limit of liability*. The amount of the *sub-limit of liability* for each respective cover and Extension is the aggregate and specified in the *schedule*.

4.39 Subsidiary

subsidiary means any entity or organisation, including any joint venture or partnership, in which on or before the inception date of this Policy (or for the purpose of Section 3.3 for New Subsidiaries, during the *period of insurance*), the *policyholder*, directly or indirectly through one or more *subsidiary*:

4.39.1 controls the composition of the board of directors, has the right to elect or appoint a majority of the board of directors (or equivalent in any other country);

4.39.2 controls more than 50% of the shareholder or equity voting rights; or

4.39.3 holds more than 50% of the issued share capital or equity.

For the purposes of determining cover, an entity shall only be deemed a *subsidiary* with respect to *financial loss* resulting directly from perils, fraud, acts or events committed, perpetrated, occurred or taking place subsequent to the date that such entity first became a *subsidiary* and prior to the date such entity ceased to be a *subsidiary*.

4.40 Tested

tested means a method of authenticating the contents of a communication between the *company* and a client of the *company* or a *financial institution*, or between the offices of the *company*, for the purposes of protecting the integrity of the communication.

4.41 Theft

theft means the intentional permanent deprivation of money, *securities* or *property*.

4.42 Trading

trading means the purchase, sale or other dealing in:

4.42.1 *securities*, commodities, futures, options, derivatives, funds, currencies including cryptographic or digital assets, tokens or currency of any kind, foreign exchange, exchange traded products and similar instruments; or

4.42.2 any other instruments traded through any regulated stock exchange, commodities or mercantile exchange, future or derivative exchange, clearing house, or any other regulated trading facility, trading system network or online platform providing services or functionality of a similar nature,

whether for the *company's* own account or for the account of clients or others.

4.43 Transfer instruction

transfer instruction means an instruction, communicated via e-mail, telephone or facsimile, directing the *company* or a *financial institution* to transfer money or *securities*.

4.44 Vendor

vendor means an entity or individual that has a legitimate written contract or a pre-existing written arrangement to provide goods or services to the *company*.

4.45 Wrongful dishonest act

wrongful dishonest act means any fraudulent, dishonest, malicious or criminal act of an *employee*, wherever committed and whether committed alone or in collusion with others.

However, in respect of *financial loss* resulting from *loans* and *trading*, *wrongful dishonest act* shall only mean any fraudulent or dishonest act of an *employee* with the intent to cause a loss to the *company* and with the intent to obtain and resulting in an improper financial gain for the *employee* who committed such *wrongful dishonest act*, or any person or organisation, other than a counterparty, in collusion with such *employee*.

Salary, fees, commission, bonuses, any similar employee benefit earned in the normal course of employment, including salary increases, promotions, profit sharing or other emoluments, do not constitute improper financial gain.

5. Exclusions

We shall not be liable under any of the terms or conditions of this Policy to make any payment for *financial loss* in connection with any of the Insuring Clauses as set out in Section 1 of this Policy or Extensions as set out in Section 2 of this Policy:

5.1 Discovery Outside of the Period of Insurance

alleging, arising out of, based upon, attributable to or as a consequence of any loss, peril, fraud, act, event or circumstance:

5.1.1 *discovered* prior to the inception date of the *period of insurance* of this Policy;

5.1.2 which a *responsible officer* knew or reasonably should have known before the inception date of the *period of insurance*; or

5.1.3 *discovered* subsequent to the expiry of the *period of insurance*, unless the *extended reporting period* is elected and applies.

5.2 Subsequent Wrongful Dishonest Act

arising out of or resulting directly or indirectly from a previous or related *wrongful dishonest act* of an *employee* committed after the time at which a *responsible officer* (not being, or acting in collusion with, that *employee*) became aware of a previous *wrongful dishonest act* of that *employee*, unless we agree in writing to waive the application of this Exclusion.

5.3 Indirect or Consequential loss

5.3.1 which is indirect or consequential loss of any kind, except when covered under Extensions 2.4, 2.5, 2.6, 2.7 or 2.8;

5.3.2 which represents loss or deprivation of income or profits, including interests and dividends or loss or rights and privileges, except when covered under Extension 2.4;

5.3.3 arising out of, based upon or attributable to business interruption (including loss of computer and time), including business interruption resulting from or as a consequence of a *security event*; or

5.3.4 loss of or damage to *property* of any kind by reason of wear, tear, gradual deterioration, moth or vermin.

5.4 Credit default

arising directly or indirectly out of or alleging the complete or partial non-payment of or default upon any *loan*, whether procured in good faith or through trick, artifice, fraud or false pretences unless such *financial loss* is covered by Insuring Clauses 1.1, 1.2.2, 1.2.3 or 1.2.4.

5.5 Voluntary Exchange or Purchase

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of *property*, money or *securities* in any exchange or purchase, unless such *financial loss* is covered by Insuring Clauses 1.1, 1.2.2, 1.2.3, 1.2.4, 1.3 or Extension 2.1.

5.6 Kidnap and Ransom

arising from or in connection with kidnap, ransom or any threat thereof.

5.7 Bills of lading and Similar documents

arising out of or resulting directly or indirectly from *forgery*, *counterfeiting* or *fraudulent alteration* of any:

5.7.1 bills of lading, being documents of title issued by a carrier to the order of a shipper and transferable to another person or entity by endorsement;

5.7.2 warehouse or trust receipts; or

5.7.3 documents of title or receipts similar in nature or effect or serving a similar purpose to any of the foregoing in 5.7.1 and 5.7.2 above.

5.8 Confidential information

alleging, arising out of or resulting directly or indirectly from the accessing of any confidential information, including but not limited to trade secrets, customer information, patents, trademarks, trade names or copyrights, *electronic data* or computer programs, except to the extent that any such confidential information is used to support or facilitate the commission of an act covered under this Policy.

5.9 Costs, Fees, Expenses

resulting from costs, fees and other expenses incurred in establishing the existence or amount of *financial loss* covered under this Policy, or in prosecuting or defending any legal proceeding or incurred as a party to any legal proceeding, except as provided for under Extension 2.5 or 2.6.

5.10 Profit, Loss or Inventory computation

when the proof of such *financial loss* being incurred by the *company* is solely dependent upon:

5.10.1 profit and loss computation or comparison; or

5.10.2 a comparison of inventory records with a physical count.

5.11 Impersonation fraud

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly *impersonation fraud*, except when covered under Insuring Clause 1.1 or Extension 2.1, 2.2, or 2.7.

5.12 Security event

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly, a *security event*, except when covered under Insuring Clause 1.1 or 1.3, or Extensions 2.1, 2.2, 2.6 or 2.7.

5.13 Corporate transaction

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly, any transaction involving the purchase or sale of shares, equity, debt or assets of any entity, unless such *financial loss* is covered by Insuring Clause 1.1.

5.14 Shareholders

when the perils, fraud, acts or event resulting in such *financial loss* involves any person who, at the time of committing an act which results in a *financial loss*, owns or controls more than 5% of issued share capital of the *company*.

5.15 Nuclear and Pollution

alleging, arising out of, based upon, in connection with, attributable to or as a consequence of:

5.15.1 the hazardous properties of nuclear material including but not limited to the actual, alleged, threatened or potential:

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

(ii) radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

5.15.2 the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of *pollutants*, or any records thereof; or

5.15.3 any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants*.

5.16 Uncontrollable events

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly:

- 5.16.1 civil unrest, including but not limited to protests, striking employees, riots and looting;
- 5.16.2 war, terrorism, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;
- 5.16.3 emergency governmental actions, including but not limited to embargos, or any seizure, confiscation, expropriation, nationalisation or destruction of a *computer system* by such governmental authority, including without limitation any damage or loss to *property* or documents as a result of such action;
- 5.16.4 failure, interruption, or outage to Internet access service provided by the internet service provider that hosts the *company's* website, including without limitation any failure of telephone lines, data transmission lines, satellites, or other infrastructure comprising or supporting the Internet unless such infrastructure is under the *company's* operational control;
- 5.16.5 fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, pandemic, epidemic or any other similar event however caused;
- 5.16.6 mechanical failure, *software* failure, faulty construction, design error, latent defect, wear or tear, gradual deterioration, electrical disturbance, failure or breakdown, *electronic data* processing failure or breakdown, or any malfunction or inadvertent error in programming or inadvertent errors or omissions in processing; or
- 5.16.7 electrical failure or interruption caused by a third party, acting independently of the *company*, or by an event outside of the *company's* control, including any electrical power, communication or other utility interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuations.

6. Discovery, Notification and Basis of Settlement

6.1 Notification of Financial Loss or Circumstances

- 6.1.1 As a condition precedent to our liability under this Policy, the *company* shall give notice to us of any actual or potential *financial loss*, as soon as reasonably practicable after *discovery*, but in all events no later than thirty (30) days after the expiry of the *period of insurance* or within the *extended reporting period* (if applicable).

Notice under this section shall include, but not be limited to, a description of the *financial loss* and details of the actual or potential damage, loss or expenses, details of the perils, fraud, acts or events, of the actors or perpetrators, and the date and manner in which the *company* first *discovered* such *financial loss*.
- 6.1.2 If during the *period of insurance* the *responsible officer* becomes aware of any circumstances which may reasonably be expected to give rise to a *financial loss* but the latter has not been established or quantified yet, they may give notice to us of those circumstances. Notice to us of such circumstances, when accepted, will be considered as the date of *discovery* of a *financial loss* under the Policy, provided that such notice of such circumstance shall make reference to the perils, fraud, acts or events which may give rise to such *financial loss* covered under this Policy, and the material facts which give rise to the belief that a *financial loss* may be sustained.
- 6.1.3 Notice hereunder shall be given to us at the address specified in the *schedule* and shall be effective from the date of receipt at such address.
- 6.1.4 The details of any other insurance policy which may apply to any *financial loss* covered under this Policy shall be reported to us within a reasonable time of any notification.

6.2 Proof of Loss

The *company* shall, as soon as reasonably practicable, following notification in accordance with Section 6.1 above provide to us proof of *financial loss*.

The proof of *financial loss* shall set out the basis on which the *company* reasonably believes that the *financial loss* is covered under this Policy and shall include any and all documentary evidence within the possession, custody or control of the *company* as is reasonably necessary to support that belief.

At our request the *company* shall provide us with additional information in order to clarify or expand on any of the evidence provided by the *company*.

In the event that the relevant acts of an *employee* are not the subject of a criminal investigation or prosecution, the question of whether such acts are fraudulent, dishonest, malicious or criminal, or whether the *company* has proved beyond reasonable doubt that an *employee*, including an unidentified person falling within clause 4.11.6 of the definition of *employee*, obtained or intended to obtain improper financial gain, will, at the election of either the *company* or Zurich, be referred to a QC or other senior lawyer with at least 10 years' experience of criminal law or fraud, for a binding determination. The costs of any such referral will be split equally between the *company* and Zurich.

6.3 Basis of Valuation and Settlement

The valuation of any direct *financial loss* under this Policy shall be determined as follows:

6.3.1 Securities

In no event shall we be liable in respect of *securities* for more than the actual cash value thereof at the close of business on the business day on which the *financial loss* was *discovered*, or, if less, the actual cost of replacing the *securities*.

6.3.2 Book of Accounts and Records

The value of books of accounts or other records used by the *company* in the conduct of their business, shall be the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data or information which shall have been furnished by the *company* in order to reproduce such books and other records.

6.3.3 Electronic Data

In the event that a *financial loss* covered under this Policy results in the destruction, erasure or *theft* of *electronic data* used by the *company* while such data is stored within the *company's computer systems*, we shall be liable under this Policy if such data is actually reproduced and cover hereunder shall only apply to the cost of labour for the actual transcription or copying of data, which shall have been furnished by the *company* in order to reproduce such *electronic data*.

6.3.4 Damage to Property

In the case of damage to the premises, we shall not be liable for more than the actual diminution in value of the *property*.

6.3.5 Foreign Currency

If a foreign currency (being a currency other than the currency in which this Policy is written) is involved in a *financial loss* sustained by the *company* under this Policy, then for the purpose of any calculation required in the settlement of a *financial loss*, the rate of exchange shall be the officially published rate on the date of such settlement.

6.3.6 Precious Metal

The value of precious metals shall be determined by their average market value on the day of *discovery* (or if *discovered* during a weekend or national holiday, on the next business day thereafter).

6.3.7 Other Property

In no event shall we be liable in respect of other *property* (not included in the above), for more than the actual cash value thereof at the time of *financial loss* or, should we elect, for more than the actual cost of repairing such other *property* or of replacing same with *property* or material of like quality and value, provided however, the actual cash value of such other *property* held by the *company* as a pledge, or as collateral for an advance or loan, shall be deemed not to exceed the value of the *property* as determined and recorded by the *company* when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates. In order to determine the actual cash value of such *property*, we may obtain an independent valuation from an expert valuer.

6.4 Single Financial Loss

All *financial loss* arising out of the same or from one or from a series of perils, fraud, acts or events which are causally connected with another or which are by any means causally inter-related or inter-connected, shall be deemed to constitute and form a single *financial loss* notwithstanding the number of perils, fraud, acts or events that have been made or occurred.

Such single *financial loss* shall (irrespective of the period of insurance in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting period* (if applicable) during which the first peril, fraud, act or event of such series was first *discovered*.

7. General Conditions

7.1 Aggregate Limit of Liability

The *limit of liability* shall be our maximum liability, in the aggregate, payable under this Policy, for all *financial loss* and all the fees costs, expenses and amounts set out in Section 2 Extensions covered under this Policy during the *period of insurance* or all *extended reporting periods* (if applicable).

Any *sub-limit of liability* stated in the *schedule* represents the highest amount we will pay in the aggregate under this Policy in respect of any Insuring Clause or Extension to which it applies. The *sub-limits of liability* form part of, and are not in addition to, the *limit of liability*. Where more than one *sub-limit of liability* applies to any *financial loss* payable under the terms of this Policy, only one *sub-limit of liability* shall apply, being the greater of such *sub-limits of liability*.

The *limit of liability* or the *sub-limits of liability* shall apply only in excess of the applicable *retention*.

The *limit of liability* for any *extended reporting period* shall be part of, and not in addition to, the *limit of liability* for the *period of insurance*.

7.2 Application of Retention

We shall only pay that amount of *financial loss* or fees, costs, expenses and amounts set out in Section 2 Extensions, that is in excess of the applicable *retention* specified in the *schedule*.

The *retention* is not part of our liability for *financial loss*. The *retention* is to be borne by the *company* (jointly or severally) and shall remain uninsured.

A single *retention* shall apply to all *financial loss* that is considered as single *financial loss* according to Section 6.4 of this Policy.

7.3 Authorisation clause and Assignment

By acceptance of this Policy, the *policyholder* agrees to act on behalf of each *company* with respect to giving and receiving notices of *financial loss* or circumstances or communication to us, termination, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy, and each *company* agrees that the *policyholder* shall act on their behalf.

Neither this Policy nor any rights hereunder may be assigned without our prior consent.

7.4 Cancellation

This Policy may not be cancelled by us except except for non-payment of premium. If the *policyholder* cancels the Policy, a refund of premium will be allowed pro rata of the premium for the unexpired *period of insurance*.

In the event there are any notified, reserved or paid circumstances or claims under this Policy, the *policyholder* will have the right to cancel this Policy, but without the right to a return of premium, and the entire premium will be deemed fully earned, unless the *policyholder* withdraws such circumstances or claims and reimburses us for any payments made under this Policy.

This Policy may not be cancelled by the *policyholder* during the *extended reporting period*, once elected.

7.5 Currency

All premiums, *limit of liability*, *retentions*, *financial loss* and other amounts under this Policy are expressed and payable in the currency specified in the *schedule*. If judgment is rendered, settlement is denominated or another element of *financial loss* under this Policy is stated in a currency other than this currency, payment of covered *financial loss* due under this Policy (subject to the terms, conditions, exclusions and limitations of this Policy) will be made either in such other currency at our option, or in the currency specified in the *schedule*, at the rate of exchange published in accordance with the Reserve Bank of New Zealand at the date the *financial loss* is to be paid.

7.6 Dispute resolution

The *company* and Zurich shall submit any dispute arising out of or relating to this Policy to a binding arbitration proceeding as described in this Section (hereinafter 'ADR Proceeding'). The seat of the ADR Proceeding shall be in Auckland, New Zealand. Either the *company* or Zurich may initiate the ADR Proceeding process by sending written notice to the other party.

Unless otherwise agreed by the parties, any such binding arbitration shall be governed by the Resolution Rules of the New Zealand International Arbitration Centre. In any such arbitration, the *insured* collectively and Zurich shall each select an independent arbitrator, and those two arbitrators shall select a third independent arbitrator. A decision by a majority of the three arbitrators shall be final and binding upon all *insureds* and Zurich. The parties to the ADR Proceeding process shall share equally the fees and expenses of the third-appointed arbitrator as well as other common expenses of the ADR Proceeding process, although each party shall pay the fees and expenses of such party's appointed arbitrator.

7.7 Fraudulent claims

If the *company* shall give notice of any *financial loss* or circumstance knowing same to be false or fraudulent, as regards amount or otherwise, such *financial loss* shall be excluded from the Policy for the fraudulent *company* and we shall have the right to avoid its obligations under this Policy in relation to that fraudulent *company* or in its entirety and in such case, the Policy shall become void and all notifications shall be forfeited.

7.8 Other Insurance, Order of Payments and Non-Stacking of Limits

If a *financial loss* covered under this Policy is also covered, wholly or partially, by any other valid and collectable insurance policy, this Policy shall only apply as second risk, including but not limited to any insurance cover for safe deposit vault, safe deposit boxes, automated teller machines, works of art, jewellery and precious stones, transit and transport of valuables and *property*, damage to the *property*, *premises*, interior offices and their contents, cover for funds and *plans*. This policy shall only pay *financial loss* in excess of the amount paid by such other insurance policy, irrespective of whether such other insurance policy is stated to be primary, contributory, excess, contingent or otherwise. As excess insurance this Policy shall not apply or contribute to the payment of any *financial loss* until the insured limits and retentions amounts of that other insurance policy have been exhausted.

Notwithstanding the above, this Policy shall always apply specifically as excess of any indemnification provided by any valid and collectable insurance coverage afforded by the *company* under any Cyber Liability Insurance, Security and Privacy or similar insurance policy, as to any *financial loss* also covered, wholly or partially, under such policy.

In the event such other Cyber Liability Insurance, Security and Privacy or similar insurance policy afforded by the *company* is provided by Zurich (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then Zurich's maximum aggregate *limit of liability* for all *financial loss* under all such Policies in respect of such cover shall be the single largest limit of liability (as specified in the *schedule*) of such policies.

7.9 Goods and Services Tax

All *limits of liability* in this Policy (except for the *retention*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to *claim* payments. However, this does not apply to the *retention* which is GST inclusive.

7.10 Policy Interpretation and Jurisdiction

The validity and interpretation of this Policy shall be exclusively governed by and construed in accordance with the laws and regulations of the country specified in the Applicable Law section of the *schedule* of this Policy.

This Policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

7.10.1 headings are descriptive only, not an aid to interpretation;

7.10.2 singular includes the plural, and vice versa;

7.10.3 the male includes the female and neuter;

7.10.4 all references to specific legislation include amendments to and re-enactments of such legislation; and

7.10.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

Any dispute under this Policy is subject to the exclusive jurisdiction of the country, region or city specified in the Applicable Law and Jurisdiction section of the *schedule* of this Policy.

In the event that any part of this Policy becomes unenforceable or invalid under any applicable law or becomes so by subsequent court decision, such unenforceability or invalidity shall not render the Policy unenforceable or invalid as a whole.

7.11 Representations

The *responsible officers* represent, warrant and acknowledge that the declarations, agreements, representations and warranties in the written *proposal* for this Policy are true and complete, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth and completeness of such representations.

The statements in the *proposal* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*), possessed by a *responsible officer* of the *company* shall be imputed to that *company*, and the knowledge of the same officers of the *policyholder* shall be imputed to all *companies*.

We agree that we shall not seek to rescind or avoid or apply other legal remedy in relation to this Policy, as a sole consequence of an innocent or negligent non-disclosure or innocent or negligent misrepresentation by a *responsible officer*.

However, in the event that such written *proposal* contains misrepresentations or omissions made with the intent to deceive or which materially affect either the acceptance of the risk or the hazard assumed by us under the Policy, or gross negligence, then coverage shall be void ab initio.

7.12 Sanctions regulation

Notwithstanding any other terms or conditions under this Policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to the *company* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *company* would violate any applicable trade or economic sanctions, law or regulation.

7.13 Subrogation and Recoveries

Upon any payment of any *financial loss*, we shall be subrogated and entitled to assume all rights of recovery available to the *company*, and the *company* shall do nothing to prejudice those rights.

We shall be entitled to pursue and enforce all rights in the name of any *company* who shall provide us with all reasonable assistance and co-operation, including the execution of all papers required. Furthermore, each *company* shall take all steps necessary or required by us, whether before or after payment by us, to preserve and secure such rights, including any remedies that the *company* may have to recover its *financial loss*, fees or expenses from any third party, or the execution of any documents necessary to enable us effectively to bring suit in the name of the *company*, whether such acts shall be or become necessary before or after payment by us.

We shall be entitled to take control of all steps which are taken to recover any covered *financial loss* from third party, whether or not a portion of the *financial loss* the *company* has suffered is uninsured. The cost of those proceedings shall be borne by the *company* and us in the same portion that the *financial loss* bears to any uninsured element of the claim or proceeding against the third party, but only to the extent that those costs are incurred after we have accepted liability under this Policy. In the event that there is no uninsured *financial loss* the costs shall be borne entirely by us.

In the case of recovery by either the *company* or us on account of any paid *financial loss*, the amount recovered, shall be applied in the following order:

- 7.13.1 first to recompense the *company* and us for the costs incurred in bringing proceedings against the third party, and which payment shall be allocated between the *company* and us in the same proportion as they have borne those costs;
- 7.13.2 then to the *company* for the amount, if any, of the covered *financial loss* which exceeds the *limit of liability*;
- 7.13.3 then, to us up to the amount of *financial loss* paid by us;
- 7.13.4 then, to the *company* in respect of any uninsured element of the claim against the third party, including the *retention(s)* applicable to the *financial loss*.

Interests on amounts recovered from third parties shall be allocated proportionally to the amounts paid according to clauses 7.13.1, 7.13.2, 7.13.3, and 7.13.4 above.

7.14 Territorial Scope of Cover

Cover under this Policy shall apply only to *financial loss* resulting directly from a peril, fraud, act or event occurring or committed or arising within the Territorial Scope specified in the *schedule*, as permitted by law.

7.15 Waiver of Privilege

If we instruct any lawyer to investigate or defend any claim against any *company*, you authorise the lawyer to provide us any documents, information or advice in respect of the *financial loss*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect. We agree to keep any documents, information or advice in respect of the *financial loss* confidential, and not to take steps to waive privilege over them.

Zurich Australian Insurance Limited

(incorporated in Australia)

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