



Companion Directors and Officers Defence Costs and Expenses Insurance

Policy Wording



Contents

Welcome to Zurich

About Zurich 2

Important information..... 2

Duty of disclosure 2

Non-disclosure or Misrepresentation 2

Our contract with you 2

Policy Wording

1. Insuring Clauses 3

2. Extensions of Cover 3

3. Changes in Risk..... 4

4. Definitions..... 4

5. Exclusions..... 10

6. Notification, Defence, Settlement and Indemnification 11

7. General Conditions..... 12

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.

Important information

This is a 'Claims Made and Notified' insurance policy. It only provides cover if:

1. A *claim* is made against the *insured*, by some other person and notified to us, during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *continuity date* stipulated in the policy *schedule*.

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 policy *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.

Companion Directors and Officers Defence Costs and Expenses Insurance

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, we agree with the *insured* to provide insurance in accordance with the terms, conditions and limitations of this Policy.

1. Insuring Clauses

- 1.1 Where we are satisfied there is a *claim* on the *traditional insurance policy* but have determined that a *statutory charge* prevents payment under the *traditional insurance policy*, we will pay to or on behalf of:
 - 1.1.1 any *insured person* the *defence costs* and *expenses* which arise from or are a consequence of the *claim*, unless such *insured person* is indemnified by the *company*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*; or
 - 1.1.2 the *company* the *defence costs* and *expenses* of the *insured person* which arise from or are a consequence of the *claim*, but only to the extent the *company* has indemnified the *insured person*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*; or
 - 1.1.3 any *outside entity executive* the *defence costs* and *expenses* which arise from or are a consequence of the *claim*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*.
- 1.2 In the event we are satisfied that no *statutory charge* applies to the *traditional insurance policy*, any remaining *limit of liability* under this Policy shall apply to pay to or on behalf of an *insured person* their *defence costs* and *expenses*, save to the extent that the *insured person* is indemnified by the *company*, in excess of the *traditional insurance policy*. Provided that:
 - 1.2.1 no other *claim* is recorded under this Policy;
 - 1.2.2 the Limits of Liability of the *traditional insurance policy* and any *underlying insurance* have been fully exhausted by payment of *claims*;
 - 1.2.3 cover is subject to the terms, conditions, exclusions and endorsements of the *traditional insurance policy*, except as specifically set forth in the terms, conditions and endorsements of this Policy; and
 - 1.2.4 this Policy shall not provide broader coverage than would be provided by any of the reduced or exhausted *traditional insurance policy*.

2. Extensions of Cover

We agree to extend cover in accordance with the following extensions, subject to the terms, conditions and exclusions of this Policy, unless expressly stated otherwise. No Extension increases our *limit of liability*, unless expressly stated otherwise.

2.1 Emergency Defence Costs and Expenses

We agree, in respect of a *claim* and prior to final adjudication of the *claim* to advance the following payments as they are incurred:

- 2.1.1 *defence costs*;
- 2.1.2 *expenses*.

We will not rely on any Conduct Exclusion, or Prior and Pending Claims Exclusion contained within the *traditional insurance policy* to deny indemnity or to refuse to advance *defence costs* under this extension until the matter in question has been finally established by a court judgment or other or final non-appealable adjudication.

If our prior consent to such costs and expenses cannot reasonably be obtained by the *insured*, the *insured* may incur *defence costs* or *expenses* without our prior consent for a period of up to thirty (30) days from the date on which they were first incurred.

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

Any such *defence costs* or *expenses* advanced by us to an *insured* shall be repaid by that *insured* in the event the *insured* shall not be entitled to the payment of such *defence costs* or *expenses*.

2.2 Extended Reporting Period

Where we have agreed to provide an extended reporting period under the *traditional insurance policy* this Policy will be similarly extended and will be subject to the same conditions and restrictions imposed under the *traditional insurance policy*.

3. Changes in Risk

For the purposes of this Policy, the full requirements imposed under the *traditional insurance policy* for 'Changes in Subsidiary', 'New Subsidiary', 'Change in Control' and 'Public Offering of Securities', this Policy will be subject to the same conditions and restrictions imposed.

4. Definitions

For the purposes of this Policy:

4.1 Civil or Bail Bond Fees

civil or bail bond fees mean the commercially reasonable fee arrangement or premium (and only that which is available at reasonable commercial rates) to obtain a bond or other similar financial instrument in respect of an *insured person's* contingent obligations imposed by a court in connection with a *claim* and excluding the amount of any bond or other guarantee itself.

4.2 Claim

claim means a claim we have confirmed is covered by the *traditional insurance policy*.

4.3 Company

company means:

4.3.1 the *policyholder* as specified in the *schedule*;

4.3.2 any *subsidiary*; and

4.3.3 any charitable foundation or charitable trust established and controlled by the *company*.

Company does not include any pension or superannuation fund, trust or scheme.

4.4 Defence Costs

defence costs mean reasonable and necessary fees (including but not limited to attorneys' fees and experts' fees), costs, charges and expenses (other than regular or overtime wages, salaries, remuneration or fees of a *director or officer* or an *employee* of the *company*) incurred with our prior consent:

4.4.1 by or on behalf of the *insured* in the investigation, defence, discharge, dismissal, adjustment, settlement or appeal of any *claim*;

4.4.2 by any accredited expert retained through defence lawyers, on behalf of the *insured* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*;

4.4.3 by an *insured person* for counsel within their country of domicile to interpret and apply advice received from counsel in a foreign jurisdiction in response to a *claim* brought in such foreign jurisdiction;

4.4.4 by the *insured* in conducting any proceeding for indemnity, contribution or recovery relating to such *claim*; and

4.4.5 by the *insured* in the pursuit of any appeal from a final award of a court, tribunal or alternative dispute resolution process binding on the *insured* and resulting from such *claim*.

4.5 Deprivation of Assets and Liberty Proceeding

deprivation of assets and liberty proceeding shall mean any formal or official proceeding brought against an *insured person* by any *official body*, resulting directly from or as part of a covered *claim*, seeking:

- 4.5.1 confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
- 4.5.2 a charge over real property or personal assets of such *insured person*;
- 4.5.3 a temporary or permanent prohibition on such *insured person* from holding the office of or performing the function of a *director or officer* (or equivalent) of any entity;
- 4.5.4 restriction of such *insured person's* liberty to a specified domestic residence or an official detention;
- 4.5.5 a prohibition on such *insured person* departing from a country; or
- 4.5.6 deportation of such *insured person* following revocation of otherwise proper, current and valid immigration status for any reason other than such *insured person's* conviction of a crime.

4.6 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, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor, or equivalent position in a foreign jurisdiction, of the *company*, including a *non-executive director* or independent director of the *company*.

4.7 Employee

employee means a natural person while in the regular service of the *company* 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 in the performance of such service. The definition of *employee* shall not include independent contractors.

4.8 Employment Practices Claim

employment practices claim means a *claim* based upon or alleging an *employment practices wrongful act*.

4.9 Employment Practices Wrongful Act

employment practices wrongful act means:

- 4.9.1 any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective *employee* or *director or officer* of the *company*; or
- 4.9.2 a proceeding, investigation or charge brought by or before the Human Rights Commission (or similar body).

Such proceeding, investigation or charge will be deemed to be made against an *insured person* when it is first brought.

4.10 Expenses

expenses mean:

- 4.10.1 *investigation costs*;
- 4.10.2 *extradition costs*;
- 4.10.3 *prosecution costs*;
- 4.10.4 *civil or bail bond fees*;
- 4.10.5 *deprivation of assets and liberty proceeding*; and
- 4.10.6 *personal reputation restoration expenses*.

4.11 Extradition

extradition means any formal process by which an *insured person* located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation resulting directly from another *claim* (other than an *extradition claim*) that is covered under this Policy.

4.12 Extradition Claim

extradition claim an official request for *extradition* or the execution of a warrant for arrest where such execution is an element of the *extradition*.

4.13 Extradition Costs

extradition costs shall mean reasonable and necessary fees, costs and expenses incurred, with our prior consent, such consent not to be unreasonably withheld or delayed, in connection with:

4.13.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting or defending any *extradition claim*; or
- (b) appealing any order or other grant of *extradition* of such *insured person*;

4.13.2 an *insured person* retaining the services of an accredited crisis counsellor and/or tax advisor and/or public relations consultant, exclusively and directly in connection with the *extradition* of that *insured person*; or

4.13.3 the overseas travelling costs (one round trip) and accommodation for the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*.

4.14 Financial Institution

financial institution 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*), investment exchange, clearing house, securities or insurance underwriter, crypto-currency companies (consisting of companies that engage in digital currencies or digital currency derivatives, including but not limited to digital currency exchanges, wallet providers, digital currency brokers and asset management, electronic trading platforms and OTC trading of digital currencies, financial services, payment gateway services and mining) or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

4.15 Insured

insured means any:

4.15.1 *insured persons*; and

4.15.2 the *company*.

4.16 Insured Persons

insured person means any natural person who is, was or during the *period of insurance* becomes:

4.16.1 a *director or officer*;

4.16.2 an *outside entity executive*;

4.16.3 an *employee* of the *company*:

- (i) while acting in a managerial or supervisory capacity for the *company*;
- (ii) who is required to co-operate with an *investigation*;
- (iii) named as a co-defendant with a *director or officer* of the *company* in a *claim*, including in a *securities claim* or an *employment practices claim*; or

- (iv) to whom the Financial Conduct Authority or Prudential Regulation Authority has given approval to perform one or more of controlled functions for a *company* pursuant to Section 59 of the UK Financial Services and Markets Act of 2000, or the equivalent position under any other similar statute, law, rule or regulation in any other jurisdiction;

4.16.4 a de facto director including any person who has not been validly appointed as a director who acts in the position of a director; or the directors of the *company* are accustomed to act in accordance with the person's instructions or wishes;

4.16.5 named as a prospective director in the listing particulars or prospectus for a public offering of *securities* issued by any *company*;

4.16.6 member of the *company's* internal audit committee, internal compensation committee, or any other internal board committee of and for the *company*; and

4.16.7 a General Counsel or Risk Manager of the *policyholder*,

but, with regard to all of the foregoing, only when and to the extent that such *insured person* is acting or has acted in their capacity as an *insured person*.

Insured person is extended to include:

4.16.8 a lawful spouse or person recognised by law as a domestic partner; and

4.16.9 estates, heirs, legal representatives (such as a guardian, administrator or receiver in bankruptcy) or any assigns or executor of a deceased, incompetent, insolvent or bankrupt estate,

of an *insured person* referred to in clauses 4.16.1 to 4.16.7 above, but solely in relation to *wrongful acts* by such *insured person*, and only in the event and to the extent that the *defence costs* and/or *expenses* would be covered under this Policy if incurred by such *insured person*.

Insured persons shall not include any auditor, receiver, consultant, conservator, liquidator, administrator, trustee, rehabilitator or the equivalent in any other jurisdiction elected by or appointed to by the *company*.

4.17 Investigation

investigation means any civil, criminal, administrative or regulatory investigation, hearing, official examination or inquiry:

4.17.1 into the affairs of the *company* or an *insured person*, commenced by or brought by an *official body*, once an *insured person* is required in writing (including by the service of a target letter or Wells Notice) by the *official body* to attend an interview or to provide information, but only where there are reasonable grounds to anticipate that a *claim* may be made against that *insured person* by such *official body* in connection with the subject matter of the information request; or

4.17.2 of an *insured person* commenced by the arrest and detainment or incarceration of such *insured person* by any law enforcement authority and relating to an alleged *wrongful act*.

An *investigation* shall be deemed to be 'first made' when the *insured person* is first identified, served, or required to co-operate or arrested and detained.

Investigation shall not include industry-wide or sector investigations, hearings, examinations or inquiries or any regular or routine regulatory audit, examination, inspection or review, including any request for mandatory information from any regulatory entity which focuses on more than three (3) or the majority of industry actors rather than the *insured*.

4.18 Investigation Costs

investigation costs mean reasonable and necessary fees, costs, charges and expenses incurred, with our prior consent, by or on behalf of an *insured person* directly in connection with such *insured person's* required participation in an *investigation*, including preparation for any required interview or provision of information.

Investigation costs do not include remuneration payable to any *insured persons* or *employee* of any *company* or any *outside entity*, cost of their time, costs or overheads of any *company* or *outside entity*, or any criminal fines or penalties (or the equivalent) levied or imposed in connection with the *investigation*.

4.19 Limit of Liability

limit of liability means the amount specified as such in the *schedule*.

4.20 Non-Executive Director

non-executive director means any natural person serving as a *director or officer* of the *company* during the *period of insurance* who is not also an *employee* of any *company* or a holder of an executive role within the *company*.

4.21 Official Body

official body means any regulator, government body, government agency, parliamentary commission, official trade body or similar body that has the legal authority to regulate, control, supervise, conduct *investigations*, perform audits, impose fines and penalties, issue orders or directives, or to undertake other actions or measures; as well as, any other public or administrative agency or self-regulatory body that is empowered by statute or statutory regulation to perform the above functions in relation to the *company*, an *outside entity* or an *insured person*.

4.22 Outside Entity

outside entity means any:

4.22.1 not-for-profit entity; or

4.22.2 for profit entity in which the *policyholder* or a *subsidiary* directly or indirectly owns any equity ownership; but excluding any:

- (a) *company*;
- (b) *financial institution*;
- (c) pension or superannuation fund, trust or scheme;
- (d) special purpose entity (SPE), special purpose vehicle (SPV), structure investment vehicle (SIV) or a special purpose acquisition company (SPAC);
- (e) entity whose *securities* are publicly traded on any exchange in the United States of America or its territories or possessions; or
- (f) other entity (other than a not-for-profit entity) in respect of which, at the inception date, or on the date of renewal, of this Policy, or on the date of the first appointment by the *company* of an *outside entity executive* to such entity, either (i) the value of its assets were less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or (ii) any credit rating issued by any rating agency in respect of that entity or any of its securities was non-investment grade;

unless such entity as described in clauses (a) – (f) is specifically listed as an *outside entity* by endorsement to this Policy.

4.23 Outside Entity Executive

outside entity executive means any natural person, including any *director, officer or employee* of the *company* who:

4.23.1 did or will serve or act; or

4.23.2 during the *period of insurance* is serving or acting,

in his or her capacity as a *director or officer*, shadow director or de facto director (or equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request.

4.24 Period of Insurance

period of insurance means the period specified in the *schedule* including any extension thereto agreed by us.

4.25 Personal Reputation Crisis

personal reputation crisis means any negative statement, authorised and published by, for or on behalf of an *official body*, specifically regarding and mentioning an *insured person*, provided that such statement is included in a press release or published in any print or electronic media outlet.

4.26 Personal Reputation Restoration Expenses

personal reputation restoration expenses mean the reasonable and necessary fees, costs, charges and expenses incurred by an *insured person*, with our prior consent, for a public relations/crisis management consultant, who shall not be a law firm, retained solely, and independently from the *company*, by an *insured person* within thirty (30) days of the *personal reputation crisis* of such *insured person*, to specifically mitigate the adverse publicity to such *insured person's* professional reputation, as a direct result of the *personal reputation crisis*.

4.27 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.

4.28 Prosecution Costs

prosecution costs mean reasonable and necessary fees, costs, charges and expenses incurred by an *insured person* in defending proceeding or in bringing a proceeding for a declaration and/or injunction to oppose any *official body* seeking a *deprivation of asset and liberty proceeding* or to appeal to seek to obtain the discharge or revocation of a *deprivation of asset and liberty proceeding*.

4.29 Retention

retention means the applicable amounts specified in the *schedule*, applicable to the various insurance clauses and type of *claims*.

4.30 Schedule

schedule means the Schedule attaching to and forming part of this policy duly signed and stamped by an authorised officer of Zurich.

4.31 Securities

securities mean any financial asset representing debt or equity interests or ownership in a *company* that is publicly traded on any exchange.

4.32 Securities Claim

securities claim means a *claim* that alleges a violation of any laws (statutory or common), rules or regulations regulating *securities*, the purchase or sale or offer or solicitation of an offer to purchase or sell *securities*, or any registration relating to such *securities*:

4.32.1 brought by any person, entity or *official body* arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any *securities* of and issued by the *company*; or

4.32.2 brought by a securities-holder of the *company* in his, her or its capacity as a *security*-holder of such *company* and with respect to his, her or its interest in *securities* of and issued by such *company*; or

4.32.3 brought derivatively on behalf of or in the name of the *company* by a securities-holder of that *company*.

Securities claim shall not include an administrative or regulatory proceeding commenced or brought against, or an *investigation* of the *company*.

Securities claim shall also not include a *claim* brought by or on behalf of any director, officer or employee of the *company* alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any *securities* (including warrants or options).

4.33 Statutory Charge

statutory charge means a charge under the Law Reform Act 1936 (NZ), Law Reform (Miscellaneous Provisions) Act 1946 (NSW), the Civil Law (Wrongs) Act 2002 (ACT), the Law Reform (Miscellaneous Provisions) Act 1956 (NT) or any other substantially similar legislation on the *traditional insurance policy*, where the value of the charge may be greater than the Limit of Liability of the *traditional insurance policy*.

4.34 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 3.2 New Subsidiaries, during the *period of insurance*), the *policyholder*, directly or indirectly through one or more *subsidiary*:

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

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

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

Subsidiary does not include any special purpose entity (SPE), special purpose vehicle (SPV), structure investment vehicle (SIV) or a special purpose acquisition company (SPAC).

For the purposes of determining cover, an entity shall only be deemed a *subsidiary* with respect to:

- (a) *wrongful acts* committed; or
- (b) in the case of a *pre-claim event*, a *self-report*, an *investigation*, an *extradition claim*, a *deprivation of asset and liberty proceeding*, a *personal reputation crisis* which occurred, commenced or arose,

subsequent to the date that such entity first became a *subsidiary* and prior to the date such entity ceased to be a *subsidiary*.

4.35 Traditional Insurance Policy

traditional insurance policy means the primary Zurich's Directors and Officers Liability Insurance policy designated in the *schedule*.

4.36 Underlying Insurance

underlying insurance means all of those policies set out in the *schedule*, excess of the primary Zurich's Directors and Officers Liability Insurance policy and any policies replacing them.

4.37 Wrongful Act

wrongful act means for the purpose of this Policy the definition of 'Wrongful Act' contained in the *traditional insurance policy*.

5. Exclusions

We shall not be liable under this Policy to make any payment for *defence costs and expenses*:

5.1 Prior Payment

which have already been paid by us under the *traditional insurance policy*.

5.2 Traditional Policy

which would otherwise be excluded under the *traditional insurance policy*.

6. Notification, Defence, Settlement and Indemnification

6.1 Notification of Claims

6.1.1 We shall only be liable under this Policy for *claims* that have been reported to us in writing as soon as reasonably practicable after the *policyholder's* Chief Legal Counsel, General Counsel, Chief Risk Officer, Risk or Insurance Manager or equivalent officer first becomes aware of such *claim* is subject to a *statutory charge* under the terms and conditions applying to the *traditional insurance policy*.

Written notice under this section shall include, but not be limited to, a description of the *claim*, the nature of the alleged or potential *defence costs* and/or *expenses*, the details of the actual or potential claimants and the date and manner in which the *insured*, first became aware of the *claim* as defined in Definition 4.2.

6.1.2 If an *insured* is unable to notify us set out in clause 6.1.1. above as a result of a specific direction or prohibition from disclosing information by an *official body*:

- (a) the *insured* shall advise us of the existence of the non-disclosure agreement and provide full disclosure of relevant information as permitted by an *official body* within thirty (30) days from being allowed to make such disclosure by the *official body*; and
- (b) the *insured* shall always keep us informed as set out in clauses 6.1.1 to the fullest extent permitted by the *official body* during this disclosure limitation and afterwards provide full details as requested by the Insurer once this limitation is removed.

6.2 Defence and Settlements, Cooperation and Defence Costs

6.2.1 Each *insured* will have the right and duty to defend and contest any *claim* made against them. We shall be entitled to participate fully in the defence of any *claim* (even where such *claim* falls within the *retention*) and in the negotiation of any settlement.

6.2.2 It shall be condition precedent to cover under this Policy that the *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* and/or *expenses* (even when such *defence costs* and/or *expenses* is within the *retention*) without our prior consent of the, except as provided under Extension 2. 1 'Emergency Defence Costs and Expenses'. Only those settlements, consent judgments, *defence costs* and/or *expenses* that have been consented by us shall erode the *retention* and/or shall be recoverable under the terms of this Policy. Where our consent is required under this Policy (including for the incurring of reasonable and necessary fees, costs and expenses under an applicable Extension) such consent will not be unreasonably withheld or delayed.

6.2.3 Each *insured* will, at their own cost (unless otherwise agreed by us or expressly provided for in this Policy):

- (a) take all reasonable steps to prevent or minimise *defence costs* and/or *expenses*; and
- (b) render all reasonable assistance to and cooperate with us in the defence of any *claim* and the assertion or indemnification and contribution rights; and
- (c) give all information and assistance us as we may reasonably require enabling us to investigate any matter under which the *insured* seeks coverage under this Policy or to determine our liability under this Policy.

6.2.4 Except to the extent that we have denied coverage, and subject to the *limit of liability*, *sub-limit of liability* and *retention*, we shall advance *defence costs* and *expenses* as and when incurred by the *insured*, in respect of any *claim* prior to the final resolution of such *claim*.

6.2.5 We may require, at our sole discretion, that the *insured's* liability alleged in a *claim* be determined in a judgment or other final, non-appealable adjudication or proceeding.

6.2.6 Any payments of *defence costs* and/or *expenses* to any *insured* that have been made by us shall be repaid to us by the person and/or entity (jointly or severally) to whom or on whose behalf such payments have been made in the event that any such payments are ultimately determined not to be covered by this Policy and/or such person or entity is ultimately determined not to be entitled under this Policy to the payment of such *defence costs* and/or *expenses*.

6.3 Duty to Defend

It shall be the duty of the *insureds* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim* made against any *insured*.

We will accept as reasonable the retention of separate legal representation and defence to the extent required by a conflict of interest between any *insured persons* or between any *insured person* and the *company*, otherwise a joint and consolidated defence is required.

6.4 Single Claims / Interrelated Acts or Events

All *claims* arising out of the same:

6.4.1 *wrongful act* or *interrelated wrongful acts*; or

6.4.2 facts, acts or events,

shall be deemed a single *claim*, and such *claim* shall be deemed to be first made on the date the earliest of such *claims* is first made against any *insured*, regardless of whether such date is before or during the *period of insurance* and regardless whether such *claim* involves the same or different claimants, *insureds* or legal causes of action.

6.5 Allocation

We shall not be liable to make any payment or to provide any service in connection with any *claim* except to the extent that such payment or service relates to the defence or settlement of a *claim* or other events for which coverage is provided under this Policy to an *insured* in its capacity as such.

Where the handling or defence of a *claim* or other events involves both covered and uncovered matters and parties, we shall only be liable for such costs, payments and services which relate exclusively to the defence and settlement of a *claim* or other covered event on behalf of the *insured* in their capacity as such, and we and the *insured* agree to use their best endeavours to determine a fair and proper allocation of such *defence costs* and/or *expenses*.

With respect to *defence costs* and/or *expenses* jointly incurred by the *company* and any *insured person* or that are subject to the applicability of different *retentions*, in connection with any *claim*, the *company* and the *insured person(s)* and we agree to use their best endeavours to determine a fair and proper allocation of such *defence costs* and/or *expenses* between the *insured person(s)* and the *company*.

If we and the *insured* cannot agree on allocation in accordance with this section, then all such parties hereby agree to refer to the determination of the Dispute Resolution proceeding stated in the *traditional insurance policy*.

7. General Conditions

The policy General Conditions contained within the *traditional insurance policy* apply equally to this Policy. The following General Conditions apply to this Policy and take precedence over the Conditions contained within the *traditional insurance policy*.

7.1 Connectivity with Traditional Insurance Policy

Where we have paid *defence costs* or *expenses* under this Policy in respect of a *claim* and it is subsequently determined (at our sole and absolute discretion) that a *statutory charge* does not prevent payment under the *traditional insurance policy*, we will be entitled to seek reimbursement of any *defence costs* or *expenses* from the *traditional insurance policy*. Any amount reimbursed will reinstate the *limit of liability* by the amount so reimbursed.

7.2 Retention

Where a *claim* would have been subject to a *retention* under the *traditional insurance policy* and we have agreed to pay *defence costs* and *expenses* in respect of that *claim* under this Policy, we will only be liable for *defence costs* and *expenses* that exceed the *retention* specified in the *traditional insurance policy*.

Where we have agreed to pay *defence costs* and *expenses* under this Policy and later determine that a *statutory charge* does not prevent payment under the *traditional insurance policy*, we will only apply a single *retention*, being the *retention* specified in the *traditional insurance policy*.

7.3 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.

7.4 Limit of Liability

7.4.1 Subject to the Insuring Clauses and Extensions, the *limit of liability* as specified in the *schedule* will be our maximum liability, in the aggregate, payable under this Policy for all:

- (a) covered *defence costs* or *expenses* arising from all *claims* during the *period of insurance* and any extended reporting period (if applicable); and
- (b) insofar as not encompassed within (a) above, all sums payable under any of the Extensions.

7.4.2 The *limit of liability* for any applicable extended reporting period shall not increase the *limit of liability*.

7.4.3 All *sub-limits of liability* are part of and not in addition to the *limit of liability*.

7.5 Waiver of Contribution

We will not pay any *defence costs* or *expenses* to the extent that they have been caused or contributed to by the *insured* giving up any right or contribution or indemnity without our prior consent.

Zurich Australian Insurance Limited

(incorporated in Australia)

Trading as Zurich New Zealand

ABN 13 000 296 640, AFS Licence No: 232507

Level 9, 29 Customs Street West, Auckland Central 1010

Client Enquiries

Telephone: 0508 987 424

www.zurich.co.nz



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