



Directors and Officers Liability Insurance

Financial Institutions – Policy Wording



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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 *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.

Directors and Officers Liability Insurance Financial Institutions Policy

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* resulting directly from *claims* first made against the *insured* or *pre-claim events* or other Extensions of Cover first occurring during the *period of insurance* or the *extended reporting period* (if applicable) and notified to us as required by Section 6 of this Policy.

1. Insurance Clauses

1.1 Insured Person

We will pay to or on behalf of an *insured person* the *financial loss* that arises from a *claim* made against such *insured person*, except to the extent that it is *indemnifiable financial loss* by the *company*.

1.2 Company Reimbursement

We will pay to or on behalf of the *company* that portion of the *financial loss* that constitutes *indemnifiable financial loss*, and results from a *claim* made against an *insured person*.

2. Extensions of Cover

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

2.1 Investigations

We will pay the *investigation costs* of an *insured person* resulting from an *investigation*.

2.2 Assets and Liberty Protection Cover

We will pay to or on behalf of an *insured person*, the:

2.1.1 *civil or bail bond fees*;

2.1.2 *prosecution costs*; and

2.1.3 *assets and liberty protection costs*,

incurred by the *insured person*, with our prior consent (such consent not to be unreasonably withheld or delayed), in relation to a *deprivation of asset and liberty proceeding* against such *insured person*.

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

2.3 Non-Executive Director Additional Protection

We will pay the *excess limit of liability* for that portion of the *financial loss* of a *non-executive director* that arises from a *claim* made against such *non-executive director*.

The coverage provided under the *excess limit of liability* shall be available specifically excess of, and shall not drop down to be primary insurance until the exhaustion of:

(i) the *limit of liability* of this Policy;

(ii) the limit of liability of all other applicable directors and officers/management liability insurance policies written as specific excess over this Policy, or otherwise; and

(iii) any and all contractual or statutory entitlement to indemnification available to any *non-executive director* or *officer* from any source whatsoever.

This Extension of cover shall not apply to *indemnifiable financial loss*.

2.4 Pre-Claim Event

We will pay to or on behalf of an *insured person* the *pre-claim costs* incurred, with our prior consent, by such *insured person* in connection with a *pre-claim event*.

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

2.5 Civil and Administrative Fines and Penalties

We will pay *civil and administrative fines and penalties* imposed on an *insured person* that arise from a covered *claim* made against such *insured person*, but only to the extent that such *civil and administrative fines and penalties* are insurable under both the law applicable to this Policy and the jurisdiction in which such *civil and administrative fines and penalties* are imposed or levied. The burden of proving the insurability of such *civil and administrative fines and penalties* remains with the *insured person*. Coverage under this Extension applies only once such insurability is determined by final adjudication, or final regulatory enforcement or proceeding.

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

2.6 Extradition

We will pay to or on behalf of an *insured person* the *extradition costs* arising from an *extradition claim* made against such *insured person*.

The cover provided under this Extension, in the aggregate for clauses defined under definition 4.24, shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.7 Insolvency Hearing

We will pay to or on behalf of an *insured person* the *insolvency hearing costs*.

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

2.8 Loss Mitigation

We will pay to or on behalf of an *insured person* any *mitigation costs* incurred during the *period of insurance* provided that, and as a condition precedent to coverage under this Extension:

- (i) notification is made to and accepted by us in accordance with Section 6 of this Policy; and
- (ii) if such notification were to give rise to a *claim*, such *claim* would be covered under this Policy; and
- (iii) before incurring any *mitigation costs*, the *insured person* demonstrates to us the reasonableness and necessity of the proposed actions and costs to mitigate or avoid a covered *claim*, and receive our express prior consent for such *mitigation costs*; and
- (iv) we shall be entitled to associate fully with the *insured person* in relation to the proposed actions before they are undertaken and we shall be kept fully updated.

The burden of proving that the potential *claim* would be covered under this Policy shall rest with the *insured person*.

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

2.9 Personal Reputation Restoration

We will pay the *personal reputation restoration expenses* of an *insured person* (and of the *company* to the extent the *company* has indemnified such *insured person* for such *financial loss*) resulting directly from a *personal reputation crisis*.

The *personal reputation crisis* must first arise during the *period of insurance* and must relate to a *claim* or *investigation*. A *personal reputation crisis* shall be deemed to 'first' arise when such press release or publication was first released. A *personal reputation crisis* shall conclude once the public relations/crisis management consultant advises the *policyholder* or such *insured person* that such *personal reputation crisis* no longer exists or when the *sub-limit of liability* has been exhausted.

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

2.10 Taxes and Social Security Contributions

We will pay to or on behalf of an *insured person* the unpaid corporate taxes and/or social security contributions owed by the *company* due to the *company's financial impairment* to the extent that:

- (i) it is determined by final legal adjudication that the *insured person* is personally liable for payment of such taxes and/or social security contributions in the jurisdiction in which the *claim* is made; and
- (ii) such taxes and/or social security contributions do not constitute *indemnifiable financial loss*; and
- (iii) such taxes and compensation are not owed as the result of any intentional, criminal or wilful act to breach any statutory or contractual duty governing the payment of such taxes or compensation by such *insured person*.

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

2.11 Health and Safety

We will pay to or on behalf of an *insured person*:

2.11 *financial loss*, including *investigation costs*, arising directly from a *claim* made or *investigation* commenced against such *insured person*, by an *official body* in relation to any alleged breach of workplace health and safety laws; or

2.11.2 *defence costs* and/or *investigation costs* in relation to any *corporate manslaughter proceeding*.

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

2.12 Environmental Claim

We will pay to or on behalf of an *insured person* or the *company*, where it has indemnified an *insured person*, the *financial loss* that arises from an *environmental claim* made against such *insured*.

The cover provided under this Extension, and any cover provided under this Policy for an *environmental claim* shall be subject to the applicable *retention* and the *sub-limit of liability* as specified in the *schedule*.

2.13 Cyber Event

2.13.1 Education & Training

We will pay for all reasonable and necessary costs and expenses of the *company* that arise from a *cyber event* for educational or training programs for any *director or officer* in connection with a covered *claim* made against an *insured*.

2.13.2 Loss of Data

We will pay for all reasonable and necessary costs and expenses of the *company* that arise following a *cyber event* for the hiring of an IT security consultant to review and revise existing data protection policies or develop an internal incident response plan in connection with a covered *claim* made against an *insured*.

The cover provided under this Extension shall be subject to the *retention* applicable for Insurance Clause 1.2 and the *sub-limit of liability*, for clause 2.13.1 and 2.13.2 combined, as specified in the *schedule*.

2.14 Derivative Demand Investigation

We will pay the *derivative demand investigation costs* incurred by the *company* in connection with a *security holder derivative demand*.

The cover provided under this Extension shall be subject to the *retention* applicable for Insurance Clause 1.2 and the *sub-limit of liability* as specified in the *schedule*.

2.15 Derivative Shareholder Claims Indemnity

We will pay the costs incurred by the *company* if the *company* is ordered by a court to pay the costs of shareholder claimants pursuing a *security holder derivative demand* against an *insured person*.

We will pay such costs provided that such *security holder derivative demand* constitutes a *claim* otherwise covered under this Policy.

The cover provided under this Extension shall be subject to the *retention* applicable for Insurance Clause 1.2 and the *sub-limit of liability* as specified in the *schedule*.

2.16 Emergency Costs

If our prior consent cannot reasonably be obtained in a timely manner by an *insured* before *defence costs*, *pre-claim costs*, *investigation costs*, *extradition costs* or *asset and liberty protection costs* are incurred, with respect to a covered *claim*, we shall provide retroactive approval, in accordance with Section 6.4 of this Policy.

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*.

2.17 Extended Reporting Period

2.17.1 Non-Renewal

In the event this Policy is not renewed by either Zurich or the *policyholder*, the *policyholder* shall be entitled to an *extended reporting period* as follows:

- (a) automatically for ninety (90) days at no additional premium; or
- (b) for the period specified in the *schedule*, subject to the *policyholder* making a written request for such *extended reporting period* no later than thirty (30) days after the expiry of the *period of insurance* and duly paying the applicable required additional premium.

If our offer of renewal cover are on terms which differ from the ones contained in the expiring Policy, including but not limited to the *limit of liability* and *retention*, this does not constitute non-renewal.

2.17.2 Change in Control

In the event of a *change in control*, the *policyholder* does not have the right to automatically elect an *extended reporting period* as set out under 2.16.1 above 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 duly paying the applicable additional premium.

2.17.3 Insured Person ERP Election

If the *policyholder* is entitled to but does not exercise an *extended reporting period* as described in clauses 2.17.1 or 2.17.2 above, and this Policy is neither renewed nor replaced with any other directors and officers liability policy, then any *insured person(s)* may request an *extended reporting period*.

If we consent to such *extended reporting period*, it shall also set the additional premium which shall be duly paid by such *insured person*. The *extended reporting period* will only apply to the *financial loss* of the specific *insured person(s)* who elected such *extended reporting period* arising from *claims* against such *insured person(s)*. Only one *extended reporting period* shall apply to all such *insured persons* (combined), in the aggregate.

The right of election under this Extension shall lapse unless notice of such election is given by the *insured person* to us within thirty (30) days after the *policyholder's* right to exercise the *extended reporting period* has expired.

2.17.4 Retired Directors and Officers Protection

We will provide unlimited *extended reporting period* under this Policy for any *director or officer* who has retired from their position(s) as *director or officer* with the *company* solely as a result of them being required to retire on account of any age limit or limit on length of service in any applicable service contract or policy of the *company* during:

- (a) the *period of insurance* of this Policy; or
- (b) the period of insurance of any other directors and officers' insurance policy issued by us to the *policyholder* of which this Policy is a continuous renewal,

to the extent that this Policy is not renewed or replaced or where such renewal or replacement does not specifically provide *extended reporting period* cover for such *directors or officers*.

This Extension shall not apply to that portion of *financial loss* indemnified by a *company* or to any *directors or officers* who retired from their positions with the *company* for any other reason, including (but not limited to) in connection with or after a *change in control*.

With respect to the foregoing clauses 2.17.1 to 2.17.4, cover during the *extended reporting period* is provided up to the amount of the remaining unexhausted *limit of liability* available for this Policy.

Furthermore, 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 replacement of this Policy by any other insurance policy, issued by us or any other insurance company, covering wholly or substantially or partially the same risk.

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

2.18 Continuous Cover

Notwithstanding Exclusion 5.4 'Prior and Pending Claims or Notifications', and subject to Condition 7.17 'Non-disclosure and Misrepresentation Waiver', we will pay *financial loss* which arises from any *claim* or *investigation* first made against an *insured* during the *period of insurance* arising from a *prior known fact*, provided always that:

- 2.18.1 the *insured* has maintained without interruption, Directors' and Officers Liability insurance from the *continuity date* to the present date; and
- 2.18.2 neither the *claim* nor the *prior known fact* has been notified to us earlier or to any other insurer under any policy at any time; and
- 2.18.3 cover under this Extension will be pursuant to the terms, conditions, and exclusions of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no greater or wider cover in respect of the *claim* than the provisions of this policy.

3. Changes in Risk

3.1 Changes in Subsidiary

If during the *period of insurance*, the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, sells off, spins off, merges or liquidate any *subsidiary*, coverage under this Policy with respect to such *subsidiary* shall continue until expiry of the *period of insurance* only for *claims*:

- 3.1.1 resulting from *wrongful acts* by an *insured* of such *subsidiary* or events taking place prior to the selling off, spinning off, merger or liquidation of such *subsidiary*; and
- 3.1.2 first made during the *period of insurance* or the *extended reporting period* (if applicable); and
- 3.1.3 where only the *insured*, not the divested *subsidiary*, remains legally or contractually liable for such *claim*.

The *policyholder* shall provide notice to us within ninety (90) days of such sell-off, spin-off, merger, or liquidation or before the expiry of the *period of insurance*, whichever occurs first.

3.2 New Subsidiaries

If during the *period of insurance*, the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, acquires or creates a new *subsidiary*, coverage under this Policy is automatically extended to such new *subsidiary* and its *insureds*, unless such *subsidiary*:

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

3.2.2 has *securities* publicly traded on any *securities*' exchange.

If a newly acquired or created *subsidiary* falls into 3.2.1 to 3.2.2 above, such entity will be covered under this Policy, but only for a period of thirty (30) days from the effective date of acquisition or creation by the *policyholder*, 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 *subsidiary*.

We may, in our sole discretion, extend coverage for any such new *subsidiary* beyond the thirty (30) day period if during the thirty (30) day period, the *policyholder*:

- (a) requests an extension of this Policy for such *subsidiary* to us; and
- (b) give us enough details to allow us to assess and evaluate the potential increase in exposure; and
- (c) agrees to any additional premium and amendments to the Policy required by us at our sole discretion.

Unless otherwise agreed in and attached as an endorsement to this Policy, cover under this Policy for such *subsidiary* first acquired or created during the *period of insurance* shall only apply for *wrongful acts* or other acts, facts or event covered under this Policy, committed or occurring or taking place after such entity is first acquired or created and whilst remaining a *subsidiary* of the *policyholder*.

3.3 Change in Control

If during the *period of insurance*, a *change in control* occurs, coverage under this Policy shall only apply in respect of *wrongful acts* or other events covered by this Policy committed or occurring prior to the effective date of a *change in control*.

As a condition precedent to coverage under this Policy, the *policyholder* shall give 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*.

3.4 Public Offering of Securities

If during the *period of insurance*, the *policyholder* or any *subsidiary*:

3.4.1 announces its intention to make, or undergoes, a public offering(s) of its *securities* on any market or exchange, whether its *securities* are already traded or not by any means; or

3.4.2 causes its *securities* to be listed on any market or exchange on which its *securities* were not traded as of the inception date, or on the date of renewal, of this Policy; or

3.4.3 de-lists or changes the listing status or level of any of its *securities* or increases any level ADR to either a higher-level ADR or a direct US listing with a requirement to file an annual report form 10K or 20F,

then we shall not be liable to make any payment for *financial loss* in connection with any *claim* alleging, arising from, based upon, attributable to or as a consequence of such intended or actual offering, delisting or change in listing of *securities*, including the prospectus or any other disclosures made in connection with such offering, delisting or change in listing, unless the *policyholder* agrees to any amendments to this Policy and pays any additional premium required by us related to such offering.

The *policyholder* shall make a request for such coverage within thirty (30) days following the public announcement of such offering, delisting or change in listing and in any case prior to the actual offering, delisting or change in listing.

4. Definitions

When used in this policy, its schedule and its Endorsements, the following definitions shall apply:

4.1 Asset and Liberty Protection Costs

asset and liberty protection costs mean reasonable and necessary fees, costs, charges and expenses by an *insured person* in defending a *deprivation of asset and liberty proceeding* against such *insured person*.

4.2 Bodily Injury

bodily injury means illness, injury, sickness, mental anguish, emotional distress, disease or death of any person.

4.3 Change in Control

Change in Control means:

4.3.1 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).

4.3.2 the nationalisation of the *policyholder* by the taking of the *insured's* assets directly or indirectly, in whole or in substantial part, into state or government ownership; or

4.3.3 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*; or
- (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.

4.4 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.

4.5 Civil and Administrative Fines and Penalties

civil and administrative fines and penalties mean:

4.5.1 civil, administrative or regulatory monetary penalties directly assessed by an *official body* against an *insured person* for a violation of any law, regulation or statute but only if such fines and penalties are not relating to or resulting from a knowing, wilful or criminal violation of law; and

4.5.2 civil monetary penalties directly assessed against an *insured person* pursuant to Section 2(g)(2)(B) or Section 78ff(c)(2)(B) of the United States (U.S.) Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-2(g)(2)(B) or any similar legislation of any other country.

4.6 Claim

claim means:

- 4.6.1 a written demand, at the time of the *insured's* receipt of such demand, for monetary, non-monetary or injunctive relief or other legal remedy, except where such demand is made by the *company*, unless the demand is a required precursor to the commencement of any civil proceeding as described in clause 4.6.2, in which case, the *claim* is deemed to be made at the time of the *Insured's* receipt of such written demand;
- 4.6.2 a civil or criminal proceeding (including any counter-claim) commenced by the service of a complaint or similar pleading;
- 4.6.3 a regulatory or administrative proceeding, commenced by the filing of a notice of charges or similar document; or
- 4.6.4 arbitration proceeding against any *insured* or mediation or other dispute resolution process, alleging a *wrongful act*; and
- 4.6.5 for the purposes of determining cover and the applicability and interpretation of the terms and conditions of Section 3, 5, 6 and 7 of this Policy, the term *claim* shall also include a *pre-claim event, investigation, corporate manslaughter proceeding, security holder derivative demand, securities claim, employment practices claim, environmental claim* and *extradition claim*.

4.7 Clean Up Costs

clean up costs mean reasonable costs, expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying, reducing, remediating or assessing the effects of *pollutants* or greenhouse gases.

4.8 Company

company means:

- 4.8.1 the *policyholder*;
- 4.8.2 any *subsidiary*; and
- 4.8.3 any charitable foundation or charitable trust established and controlled by the *company*.

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

4.9 Continuity Date

continuity date means for *insured persons*, the Continuity Date for *insured persons* specified in the *schedule*.

4.10 Corporate Manslaughter Proceeding

corporate manslaughter proceeding means a criminal proceeding for manslaughter against a *director or officer* in their capacity as such for a *company*, arising out of an incident giving rise to one or more fatalities in which the *company* is implicated or alleged to have played some part, including but not limited to involuntary, constructive or grossly negligent manslaughter, and directly related to the business of the *company*.

4.11 Cyber Event

cyber event means:

- 4.11.1 a *privacy event*; and/or
- 4.11.2 a *security event*.

4.12 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:

- 4.12.1 by or on behalf of the *insured* in the investigation, defence, discharge, dismissal, adjustment, settlement or appeal of any *claim*;
- 4.12.2 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*;
- 4.12.3 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;
- 4.12.4 by the *insured* in conducting any proceeding for indemnity, contribution or recovery relating to such *claim*;
- 4.12.5 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*; and
- 4.12.6 by an *insured person* for to seek reconsideration or review of an administrative order disqualifying such *director or officer* from holding a position as a *director or officer* in the *company*.

4.13 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:

- 4.13.1 confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
- 4.13.2 a charge over real property or personal assets of such *insured person*;
- 4.13.3 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;
- 4.13.4 restriction of such *insured person's* liberty to a specified domestic residence or an official detention;
- 4.13.5 a prohibition on such *insured person* departing from a country; or
- 4.13.6 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.

4.14 Derivative Demand Investigation Costs

derivative demand investigation costs mean the reasonable and necessary legal and other fees, costs and expenses (other than regular or overtime wages, salaries or fees of a *director or officer*, or *employee* of the *company*) incurred, with our prior consent, by the *company* (including its Board of Directors, any committee of its Board of Directors or Supervisory Board Members) in investigating or evaluating the *wrongful acts* alleged in a *security holder derivative demand*.

4.15 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*, independent director of the *company* or an 'Accountable Person' within the meaning of the Banking Act 1959 (Cth).

4.16 Employee

employee means a natural person while acting 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.

4.17 Employment Practices Claim

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

4.18 Employment Practices Wrongful Act

employment practices wrongful act means:

4.18.1 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

4.18.2 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.

4.19 Environmental Claim

environmental claim means any *claim* based upon, arising out of or attributable to:

4.19.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or greenhouse gases into or on real or personal property, water or the atmosphere; or

4.19.2 any direction or request that the *company* or the *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or greenhouse gases, or any voluntary decision to do so, whether or not such greenhouse gases are *pollutants*.

4.20 Excess Limit of Liability

The additional *excess limit of liability* means our maximum liability per *non-executive director*, as specified the *schedule*, arising from all *claims* made against such *non-executive director*, and in the aggregate, as specified in the *schedule*, for all *claims* against all *non-executive directors* combined, payable under this Policy for all *financial loss*, as set out in Extension 2.3 Non-Executive Director Additional Protection.

4.21 Extended Reporting Period

extended reporting period means the period immediately following the *period of insurance* during which the *insured* may notify us of any *claim* first made during such period solely for a *wrongful act*, or of any *investigation* or *pre-claim event*, in connection with facts, acts or events, first occurring or arising prior to the expiration of the *period of insurance*.

4.22 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.

4.23 Extradition Claim

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

4.24 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:

4.24.1 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*;

4.24.2 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

4.24.3 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*.

4.25 Financial Impairment

financial impairment means the status of the *company* resulting from:

- 4.25.1 the appointment by any governmental, provincial, federal or state official, agency or court of any trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction) to take control of, supervise, manage or liquidate the *company*; or
- 4.25.2 the *company* becoming a debtor in possession (or the equivalent status in the applicable jurisdiction).

4.26 Financial Loss

financial loss means the total amount the *insured* is liable to pay for:

- 4.26.1 compensatory damages and related costs resulting from a *claim* made against such *insured*, for which coverage applies, awarded pursuant to a judgment or other adjudication of a court or tribunal by whose jurisdiction the *insured* is bound, or following arbitration or other alternative dispute resolution processes whose findings are binding upon the *insured*, including, but not limited to judgments (and any award of pre-judgment and post-judgment) interest on, and plaintiff's or claimant's legal fees awarded with respect to covered damages or compensation for damages awarded by an *official body*;
- 4.26.2 a settlement negotiated by the *insured* with our prior consent in accordance with the provisions of this Policy;
- 4.26.3 *defence costs*;
- 4.26.4 *investigation costs, civil or bail bond fees, prosecution costs, assets and liberty protection costs, pre-claim costs, civil and administrative fines and penalties, extradition costs, insolvency hearing costs, mitigation costs, personal reputation restoration expenses* solely with respect to Insurance Clause 1.1; and
- 4.26.5 amounts as set forth in the following Extensions of this Policy:
 - (i) 2.3 – Non-Executive Director Additional Protection, solely with respect to Insurance Clause 1.1;
 - (ii) 2.10 – Taxes and Social Security Contributions, solely with respect to Insurance Clause 1.1;
 - (iii) 2.11 – Health and Safety, solely with respect to Insurance Clause 1.1;
 - (iv) 2.12 – Environmental Claim;
 - (v) 2.13 – Cyber Event;
 - (vi) 2.14 – Derivative Demand Investigation; and
 - (vii) 2.15 – Derivative Shareholder Claims Indemnity.

Financial loss does not include any of the following:

- 4.26.6 any amount not indemnified by the *company* for which the *insureds* are absolved from payment by reason of any covenant, agreement or court order;
- 4.26.7 any damages award as a result of an *employment practices claim* for which the *company* and an *insured person* are jointly liable to pay, except where the *company* is unable to pay such damages award due to *financial impairment*;
- 4.26.8 taxes and social security contributions, other than as provided under Extension 2.10;
- 4.26.9 social or pension benefits or contributions, wages, salaries or other remuneration or employment related benefits paid by or to any *insured*, except for *employee* (other than *directors or officers*) compensation (other than bonus) owed by the *company*, to the extent that: (i) it is determined by law that the *directors or officers* are personally liable for such compensation; (ii) due to *financial impairment* of the *company* and (iii) it is not *indemnifiable financial loss*;

- 4.26.10 fines or penalties, other than as provided under Extension 2.5, or punitive, exemplary or multiple damages, except: (i) when such damages are assessed or imposed with respect to a covered *claim*, other than an *employment claim*; and (ii) if and only to the extent that such damages are insurable under the law applicable to this Policy, and in the jurisdiction in which such damages are assessed or imposed, and such *claim* is made or the *wrongful act* that gave rise to a *claim* took place.
- 4.26.11 any amount incurred by the *company* that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a *company* in connection with its purchase of any *securities* or assets;
- 4.26.12 *clean up costs*;
- 4.26.13 remuneration payable to any *insured*, cost of any *insured's* time or costs or overhead of any *company* or of any *outside entity*;
- 4.26.14 disgorgement or restitution of any ill-gotten gains; or
- 4.26.15 matters which are uninsurable under the law pursuant to which this Policy is construed. Nonetheless, it is understood and agreed that we shall not assert that any *defence costs* or settlements incurred by an *insured person* are uninsurable due to the *insured person's* actual or alleged violation of Section 11, 12 or 15 of the U.S. Securities Act of 1933 (as amended) unless declared uninsurable by court order or determination.

4.27 Indemnifiable Financial Loss

indemnifiable financial loss means the *financial loss* which the *company* is not specifically prohibited from indemnifying the *insured person* for, by reason of the law applicable to the *company*, the *company's* statutes or by-laws, or any resolution of the *company's* shareholders, unless the *company* is unable to indemnify the *insured person* due to *financial impairment*.

4.28 Insolvency Hearing Costs

insolvency hearing costs mean reasonable and necessary fees, costs and expenses incurred, with our prior consent, to retain legal advice for an *insured person's* preparation for and attendance at any formal or official hearing in connection with an investigation or inquiry into the affairs of the *company* or an *insured person* in the capacity of a *director or officer*, following a request in writing from any trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction), where the facts underlying such written request, investigation or inquiry may reasonably be expected to give rise to a *claim* against such *insured person*.

In no event shall *insolvency hearing costs* include the remuneration of any *insured person*, the costs of their time or any other costs or overheads of any *company*.

4.29 Insured

insured means any:

4.29.1 *insured person*; and

4.29.2 the *company*, but only with respect to Extensions 2.13 through 2.15.

4.30 Insured Person

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

4.30.1 a *director or officer*;

4.30.2 an *outside entity executive*;

4.30.3 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;

4.30.4 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;

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

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

4.30.7 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:

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

4.30.9 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 4.30.1 to 4.30.7 above, but solely in relation to *wrongful acts* by such *insured person*, and only in the event and to the extent that the *financial loss* 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*.

4.31 Internal Investigation

internal investigation means a written request for an *insured person* to:

4.31.1 appear at a meeting or interview (including a request to provide a written response); or

4.31.2 produce documents, records or electronic information that concerns an *insured person* in their insured capacity,

but only if the request is made on behalf of the *company* by its board of directors (or the equivalent management body) or any supervisory board or committee of the board of directors (or the equivalent management body) and alleging an actual or suspected material breach of an *insured person's* legal or regulatory duties which constitutes a *wrongful act*.

Internal investigation shall not include any regular or routine regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from any regulatory entity, conducted in a *company's* normal review or compliance process.

In connection with any *internal investigation*, we shall only be liable to pay costs that are not *indemnifiable financial loss*.

4.32 Interrelated Wrongful Acts

interrelated wrongful acts mean all *wrongful acts*, including all *wrongful acts* that have as a common nexus any fact, act, circumstance, event, transaction, cause or series of causally connected facts, acts, circumstances, events, transactions or causes.

4.33 Investigation

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

4.33.1 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

4.33.2 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*.

4.34 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*.

4.35 Investment Entity

investment entity means any entity whose equity securities are not registered to trade and have not traded in a public market, in which one or more *investment funds* holds or held a debt or equity interest or has performed or is performing due diligence in anticipation of making an investment of its capital in such entity.

4.36 Investment Fund

investment fund means any trust, investment trust, investment fund, fund of fund, investment management company (open or closed ended), special purpose vehicle, managed investment scheme, partnership, undertaking for collective investment, private equity or venture capital fund, real estate fund, sub-fund, compartment, mandate or other similar fund or entity sponsored, created, promoted or managed by the *policyholder* or a subsidiary provided that this definition shall not include any pension or superannuation fund, pension trust or scheme or employees benefit plan.

4.37 Limit of Liability

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

4.38 Mitigation Costs

mitigation costs mean the reasonable and necessary fees, direct costs and expenses incurred by an *insured person*, with our prior consent, following the first discovery of a *wrongful act* during the *period of insurance* in order to mitigate, minimise, prevent or avoid *financial loss* that would otherwise be covered under this Policy if a *claim* were to be made arising from such *wrongful act*.

Mitigation costs does not include:

- (a) *indemnifiable financial loss*;
- (b) costs related to any liability which would not otherwise be covered under this Policy;
- (c) payments arising out of, based upon or attributable to an *investigation* or *pre-claim event*;
- (d) any increase in the liability of or the *financial loss* of the *insured person* arising from taking such actions;
- (e) the remuneration of any *insured person*, the costs of their time or any other costs or overheads of any *company*; or
- (f) any payment which would not be included in the coverage provided under this Policy if the *claim* had been made against the *insured person* by the potential claimant.

4.39 Money Laundering or Related Financial Crime

money laundering or related financial crime the actual, attempted or alleged:

4.39.1 conspiracy to commit;

4.39.1 commission of; or

4.39.1 aiding, abetting, counselling, procuring, or inciting,

the movement of illicit cash or cash equivalent proceeds including any act which is in breach of and/or constitutes an offence or offences under:

- (i) any legislation which implements or is designed to implement the European Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, as amended, and/or any offence under the International Convention for the Suppression of the Financing of Terrorism; or
- (ii) any similar legislation anywhere in the world including but not limited to the Proceeds of Crime Act 2002 (United Kingdom) and/or the Racketeer Influenced and Corrupt Organizations Act, 18 United States Code, Chapter 96 (United States).

4.40 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*.

4.41 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*.

4.42 Outside Entity

outside entity means any:

4.42.1 not-for-profit entity; or

4.42.2 for profit entity in which the *policyholder* or a *subsidiary* directly or indirectly owns any equity ownership;

but excluding any:

- (a) *company*;
- (b) *investment fund* or *investment entity*;

- (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.

4.43 Outside Entity Executive

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

4.43.1 did or will serve or act; or

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

in the capacity as a director or officer, shadow director, de facto director or trustee (but not a pension trustee) or equivalent position, of an *outside entity* at the *company's* specific direction or request.

4.44 Period of Insurance

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

4.45 Personal Information

personal information means any information from which an individual may be uniquely and reliably identified including an individual's name, telephone number, tax file number, medical or healthcare data or other protected health information, driver's licence number or passport number, bank account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in any privacy regulation applicable to the individual.

Personal information does not include information lawfully available to the general public for any reason, including information from foreign, national or local government records.

4.46 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.

4.47 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*.

4.48 Policyholder

policyholder means the entity specified as such in the *schedule*.

4.49 Pollutants

pollutants mean 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 *insured* 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.

4.50 Pre-Claim Costs

pre-claim costs mean reasonable and necessary fees, costs, charges and expenses in retaining advisors separate from the *company* or an *outside entity* to:

4.50.1 provide legal advice directly related to a *pre-claim event*; or

4.50.2 prepare a report (and any supplementary reports as necessary) to an *official body* in response to a *pre-claim event*;

provided that *pre-claim costs* shall not include *indemnifiable financial loss*.

4.51 Pre-Claim Event

pre-claim event means:

4.51.1 a raid on, or on-site visit to any *company* or any *outside entity* by an *official body* that involves the production, review, copying or confiscation of documents pertaining to an *insured person* or interviews of such *insured person*, that gives reasonable ground to believe that a *claim* may be made against that *insured person* by such *official body*, and that does not constitute an *investigation*;

4.51.2 any formal written notification to an *official body* by the *company*, by the *outside entity* or by such *insured person* of a suspected material breach of such *insured person's* legal or regulatory duty;

4.51.3 the receipt by such *insured person* of a formal notice from an *official body* which legally compels such *insured person* to produce documents to, or answer questions by, or attend interviews with, that *official body* directly as a result of a *self-report*; or

4.51.4 an *internal investigation* or enquiry conducted by the *company* at the request or instruction of an *official body* following a *self-report* or formal notification given pursuant to clause 4.49.2 and 4.49.3 above,

provided that such raid, visit, communication from an *official body*, *self-report* or *internal investigation* must first take place, first occur, commence and be first notified during the *period of insurance*.

A *pre-claim event* shall not include any regular regulatory procedure, supervision, inspection or compliance reviews, or any industry-wide or sector investigations, hearings, examinations or inquiries which focuses on more than three (3) or the majority of industry actors.

4.52 Prior Known Fact

prior known fact means:

4.52.1 an *insured person* first became aware of, after the *continuity date*, but prior to the commencement of the *period of insurance*; and

4.52.2 the *insured person* knew, at any time after the *continuity date* but prior to the commencement of the *period of insurance*, may result in an allegation against the *insured* of a *wrongful act*.

4.53 Privacy Event

privacy event means an actual or alleged:

4.53.1 unauthorised access, disclosure, loss or theft of:

- (a) *personal information* in the care, custody or control of any *insured*; or
- (b) corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract;

4.53.2 violation of any *privacy regulation* by the *insured*; or

4.53.3 unauthorised or wrongful collection of *personal information*.

4.54 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.

4.55 Professional Services

professional services mean services performed or required to be performed by an *insured* for or on behalf of a customer of that *insured*, pursuant to an agreement between such customer and that *insured*, for a fee, commission or other monetary consideration or remuneration which is for the benefit of that *insured*.

4.56 Property Damage

property damage means any damage to or destruction of any property or loss of use of such property, and any direct consequential loss resulting there from.

4.57 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.

4.58 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*.

4.59 Retention

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

4.60 Schedule

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

4.61 Securities

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

4.62 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*:

4.62.1 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

4.62.2 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

4.62.3 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).

4.63 Security Event

security event means any unauthorised access to, introduction of malware or malicious software into or denial of service attack upon the *company's* computer system resulting in:

4.63.1 an actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *company's* computer system; or

4.63.2 the theft, alteration, modification, corruption or destruction of corporate information in the care, custody or control of any *insured* that is not available or known to the public.

4.64 Security Holder Derivative Demand

security holder derivative demand means:

4.64.1 any written demand by a *security*-holder of the *company* upon the board of directors, board of managers or supervisory board members of such *company* to bring a civil proceeding in a court of law against an *insured person* for a *wrongful act*; or

4.64.2 any lawsuit by a *security*-holder of the *company*, brought derivatively on behalf of such *company*, against an *insured person* for a *wrongful act* without first making a demand as described in clause 4.64.1 above.

A *security holder derivative demand* shall be deemed to be 'first made' against an *insured* when such written demand was first received by the *company* or such lawsuit was first brought. The *security holder derivative demand* must be first received by the *company* during the *period of insurance*, or the *extended reporting period*, if applicable, for or alleging a *wrongful act* taking place before or during the *period of insurance*.

4.65 Self-Report

self-report means a written report or notification to an *official body* by the *company*, an *outside entity* or an *insured person* pursuant to a legal obligation to inform such *official body* of matters giving rise to an actual or potential regulatory issue where failure to provide such a report or delay in reporting can itself give rise to enforcement consequences to the *company* or an *insured person* from such *official body*.

4.66 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 this policy, where the value of the charge may be greater than this policy's *limit of liability*.

4.67 Sub-Limit of Liability

sub-limit of liability means our limit of liability under this Policy for certain covers and Extensions, 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 in the aggregate and specified in the *schedule*.

4.68 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*:

4.68.1 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);

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

4.68.3 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*.

4.69 US Securities Claim

US securities claim means any *securities claim* brought or commenced, in whole or in part:

4.69.1 within the jurisdiction of; or

4.69.2 pursuant to the laws of,

the United States of America or its territories or possessions.

4.70 Wrongful Act

wrongful act means actual, alleged or attempted breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other acts, errors or omissions by any *insured person* in his or her insured capacity as such, or any matter claimed against such *insured person* by reason of his/her status as such.

The term *wrongful act* shall also include an *employment practices wrongful act*.

5. Exclusions

We shall not be liable under this Policy to make any payment for *financial loss*:

5.1 Bodily Injury and Property Damage

for *bodily injury* or *property damage*, provided, that this exclusion shall not apply to:

5.1.1 *financial loss* which is not *indemnifiable financial loss*;

5.1.2 *financial loss* covered under Extension 2.11. Health and Safety;

5.1.3 a *securities claim*;

5.1.4 mental or emotional distress in connection with an *employment practices claim*;

5.1.5 an *environmental claim* covered under Extension 2.12. Environmental Claim; or

5.1.6 *defence costs* and/or *investigation costs*.

5.2 Company / Outside Entity vs Insured – US claims only

any *US claim* brought by, or on behalf of, or at the instigation of the *company* or an *outside entity*; provided, however, this exclusion shall not apply to:

- 5.2.1 a *claim* brought or maintained by a liquidator, receiver, bankruptcy trustee or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the *company* or the *outside entity* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*;
- 5.2.2 a *claim* in the form of a derivative action brought or maintained in the name of the *company* or the *outside entity* by one or more persons who are not directors or officers (or equivalent in any other country) of the *company* or the *outside entity* and who bring and maintain the *claim* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*; or
- 5.2.3 *defence costs* incurred by the *insured person*.

5.3 Conduct

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

- 5.3.1 any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- 5.3.2 any dishonest or fraudulent act or omission committed by any *insured* or any intentional violation or breach of any law or regulation; provided that this exclusion shall not apply to *defence costs* incurred by an *insured person* in connection with a *corporate manslaughter proceeding* or workplace health and safety proceeding.

Part 5.3.1 of this exclusion shall not apply in a *securities claim* against an *insured person* alleging violations of Sections 11, 12 or 15 of the United States of America Securities Act of 1933 to the portion of any *financial loss* attributable to such violations.

This exclusion only applies where the conduct in question has been finally established by court judgment or other final non-appealable adjudication.

For the purpose of determining the applicability of this exclusion:

- (a) no conduct or knowledge of an insured shall be imputed to any other *insured person*; and
- (b) only the conduct and knowledge of any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or holder of any equivalent position) of the *company* shall be imputed to the *company*.

5.4 Prior and Pending Claims or Notifications

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

- 5.4.1 facts alleged or the same or related *wrongful act(s)* alleged or contained in any *claim*, circumstance or other matter that has been:
 - (a) notified under any directors and officers or management liability insurance policy or employment practices liability insurance policy of which this policy is a renewal or replacement or which it may succeed in time (unless such prior policy was issued by us and we did not cover or accept such claim or circumstance under such prior policy); or
 - (b) disclosed in the submission or notified to any other insurer before the commencement of the *period of insurance*.
- 5.4.2 *investigation* or other proceedings ordered or commissioned at the behest of an official body or other legally empowered body as defined in this policy initiated prior to or pending on the *continuity date* specified in the *schedule*.
- 5.4.3 any civil, criminal, administrative, regulatory proceeding, litigation, suit, *claim*, proceeding, arbitration or mediation initiated or commenced prior to or pending at the 'Prior or Pending Date' specified in the *schedule*, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

5.5 Professional Services

alleging, arising out of, based upon, in connection with, attributable to or as a consequence of the *company's* or any *outside entity's* or any *insured's* performance of or failure to perform *professional services*, or any act(s), error(s) or omission(s) relating thereto.

This exclusion shall not apply to any *claim* made and maintained by one or more shareholders of the *company* or an *outside entity* (in the form of a shareholder class, direct or derivative action on behalf or in the name of the *company* or an *outside entity*, or its equivalent) against an Insured alleging failure to supervise those who performed or failed to perform such *professional services* or activities, provided that such *claim* is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the *company*, an *outside entity* or any *insured*.

5.6 Money Laundering or Related Financial Crime

arising out of, based upon, in connection with, attributable to or as a consequence of *money laundering or related financial crime*.

Save that, with respect to Insurance Clause 1.1 only, we shall advance *defence costs* pursuant to Section 6.2 until it is admitted or determined that such *money laundering or related financial crime* did in fact occur by a formal written admission by the *insured* or a judgment or other final, non-appealable adjudication or proceeding adverse to the *insured*.

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*, but no later than thirty (30) days after the expiry of the *period of insurance* or within the *extended reporting period* (if applicable).

Written notice under this section shall include, but not be limited to, a description of the *claim*, the nature of the alleged or potential *financial loss*, 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 4.6.

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 us once this limitation is removed.

6.1.3 Written 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 *claim* notification.

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 *financial loss* (even when such *financial loss* is within the *retention*) without our prior consent of the, except as provided under Extension 2.16 Emergency Costs and subject to section 6.4 below. Only those settlements, consent judgments, *defence costs*, or other *financial loss* 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 a *financial loss*; 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, excess limit of liability* and *retention*, we shall advance *defence costs* 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 *financial loss* 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 *financial loss*.

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 Emergency Costs

We shall provide retroactive approval for that part of *emergency costs* incurred by the *insured* prior to receiving our consent, when all the following are complied with:

- 6.4.1 notification is made to us, in accordance with Section 6.1 through 6.3 of this Policy, within fourteen (14) days of such costs being incurred;
- 6.4.2 such costs are incurred in relation to a notification that is already made to us as required in Section 6.1 through 6.3 of this Policy;
- 6.4.3 the *insured* can satisfactorily prove to us that the actual or potential *claim* and *financial loss* are or would have been covered under this Policy; and
- 6.4.4 the *insured* can satisfactorily prove to us the reasonableness and necessity of the actions undertaken and of the costs incurred or the effective prevention, reduction, limitation or mitigation of such *claim* and *financial loss*.

Once notification to us is made, in accordance with Section 6.1 and clause 6.4.1 above, then our prior consent is always required in respect of any further action undertaken or *emergency cost* incurred by the *insured*, after such notification, in relation to the same actual or potential *claim*.

6.5 Single Claims / Interrelated Acts or Events

All *claims* arising out of the same:

- 6.5.1 *wrongful act* or *interrelated wrongful acts*; or
- 6.5.2 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.

6.6 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 *financial loss* and/or *defence costs*.

With respect to *financial loss* and/or *defence cost* 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 *financial loss* and/or *defence costs* 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 General Condition 7.7 Dispute Resolution.

7. General Conditions

7.1 Aggregate and Additional Limit of Liability

The *limit of liability* shall be our maximum liability, in the aggregate, payable under this Policy for all *financial loss*, provided, however, that the *excess limit of liability* shall be payable in addition to the *limit of liability*.

Where a *claim*, or part of a *claim*, falls within an Extension, any *financial loss* payable under the terms of this Policy for that *claim*, or that part of the *claim*, will be subject to the applicable *sub-limit of liability* for the relevant Extension.

As specified in Definition 4.67, 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* in respect of each *claim* or other costs, expenses or amounts set out in Section 2. Extensions and, that is in excess of the applicable *retention* as specified in the *schedule*.

The *retentions* shall apply to *indemnifiable financial loss* of *insured persons* and all *financial loss* of the *company*.

The *retention* is not part of our *limit of liability*. The *retention* is to be borne by the *company* and shall remain uninsured.

A single *retention* shall apply to all *financial loss* that is considered as a single *claim* according to Section 6.5 of this Policy.

If more than one *retention* is applicable to such single *claim*, then the applicable *retentions* will be applied separately to each part of such *claim*, but the maximum total *retention* applicable to such *claim* shall not exceed the largest applicable *retention*.

7.3 Authorisation Clause and Assignment

By acceptance of this Policy:

7.3.1 the *policyholder* agrees to act on behalf of each *insured* with respect to giving and receiving notices of *financial loss*, *claims* or circumstances, cancellation or other communication to us, 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

7.3.2 each *insured* 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 Bankruptcy

Bankruptcy or insolvency of any *insured* or of the estate of any *insured* shall not relieve us of our obligations or deprive us of our rights or defences under this Policy.

7.5 Cancellation

This Policy may not be cancelled by us 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.

7.6 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.

7.7 Dispute Resolution

The *insured* 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 *insureds* 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.

7.8 Fraudulent Claims

If the *insured* shall give notice of any *financial loss*, as set out in Section 6 of this Policy, knowing same to be false or fraudulent, as regards amount or otherwise, such *financial loss* shall be excluded from the Policy for the fraudulent *insured* and we shall have the right to avoid our obligations under this Policy in relation to that fraudulent *insured* or in its entirety and in such case, the Policy shall become void and all notifications shall be forfeited.

7.9 Failure of the Company to Indemnify Insured Persons

If the *financial loss* of an *insured person* is *indemnifiable financial loss* but the *company* fails to indemnify such *insured persons* for any reason within ninety (90) days of a written demand from the *insured person* to so indemnify, then we will pay such *financial loss* to or on behalf of the *insured persons* as if such *financial loss* was not *indemnifiable financial loss* and without prior deduction of any applicable *retention*.

In such event, however, we shall be entitled to obtain immediate reimbursement from the *company* for all payments made by us that would not have been made or covered under this Policy had the indemnity been provided by the *company* in respect of such *financial loss* or such *retention*, unless the *company* fails or failed to indemnify the *insured persons* due to *financial impairment*.

Any decision by us to pay the *financial loss* of an *insured person* will be binding on the *company* and the *company* will not be entitled to withhold reimbursement of the *retention* in the event of any disagreement between us and the *company* about the payment of the *financial loss* of an *insured person*.

7.10 Order of Payments

In the event of *financial loss* arising from a *claim* for which payment is due under the provisions of this Policy, then we shall use reasonable endeavours to:

7.10.1 first, pay *financial loss* of the *insured person* for which the *company* has not indemnified; then only after this payment;

7.10.2 with respect to whatever remaining amount of the *limit of liability* is available, pay such other *financial loss* for which coverage is provided under the remaining covers under this Policy.

7.11 Other Insurance and Outside Entity Cover

7.11.1 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 and pay *financial loss* in excess of the amount paid by such other insurance policy, and 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.

7.11.2 In the event of a *claim* made against an *outside entity executive*, coverage as is afforded by this Policy shall be specifically excess of: (i) any indemnification provided by an *outside entity*; and (ii) any valid and collectable insurance coverage afforded to an *outside entity* or its directors or officers (or equivalent executive or management position), and (iii) any indemnification provided by a *company*.

7.11.3 In the event such other directors and officers or management liability insurance coverage afforded to the *outside entity* or any of its directors or officers 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 our 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.

7.11.4 However, we shall not be liable under this Policy for *financial loss* arising from any *claim* based upon, arising out of or attributable to any *wrongful act* or *interrelated wrongful acts* taking place before or after the *insured person* served as an *outside entity executive*.

7.12 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:

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

7.12.2 singular includes the plural, and vice versa;

7.12.3 the male includes the female and neuter;

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

7.12.5 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 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.

7.13 Representations, Severability and Non-Rescission of the Policy

This Policy is issued in reliance upon the truth and completeness of the declarations, agreements, representations and warranties made in the written *proposal*. Such declarations, agreements, representations and warranties are the basis of this Policy and are incorporated into and constituting a part of this Policy.

The *proposal* shall be construed as a separate proposal by each *insured person* and with respect to declarations, statements and financial information of the *proposal*:

7.13.1 no statement made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*) possessed by any *insureds* shall be imputed to any *insured persons* for the purpose of determining the availability of cover under this Policy; and

7.13.2 for the purposes of Insurance Clause 1.2 and any cover afforded to the *company* under this Policy, only 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 any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Legal Counsel, General Counsel, Chief Risk Officer (or equivalent executive or management position) 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*.

If we agree that we shall not seek to rescind or avoid, or apply other legal remedy in relation to this Policy, or any severable part of this Policy, with respect to cover under the Policy for any *insured person* who did not make any wrongful statement or did not have knowledge of any wrongful statement or misrepresentation or non-disclosure with regard to the *proposal*.

We further agree that we shall not seek to rescind or avoid, or apply other legal remedy in relation to this Policy, or any severable part of this Policy, where our remedy of rescission or avoidance arises solely as a result of innocent or negligent non-disclosure or innocent or negligent misrepresentation by an *insured person*.

7.14 Non-Imputation of Exclusions

No act or conduct of an *insured* shall be imputed to any other *insured persons* for the purpose of determining the applicability of the foregoing exclusions in Section 5.

Only those acts or conduct committed by any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel, Chief Legal Counsel, Chief Risk Officer or equivalent of the *company* shall be imputed to that *company*, and the acts or conduct of the same officers of the *policyholder* shall be imputed to all *companies*, for purposes of determining the applicability of the foregoing exclusions in Section 5.

7.15 Subrogation and Recoveries

Upon any payment of any *claim* we shall be entitled to assume all rights of recovery available to any *insureds* or the *company*, including but not limited to trying to recover from the *company* any *financial loss* or *retention* paid by us pursuant to General Condition 7.9 of this Policy.

The rights and obligations under this clause also apply in respect of any payment of *financial loss* by us in connection with a *claim* which would have been excluded pursuant to Exclusion 5.4. Prior and Pending Claims or Notifications had a valid notification to another policy existing or expired before or on the inception date of this Policy been accepted.

We shall be entitled to pursue and enforce all rights in the name of any *insured* who shall provide all reasonable assistance and co-operation to us in the prosecution of such rights. Furthermore, each *insured* 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 *insured* may have to recover our *financial loss*, costs 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 *insured*, whether such acts shall be or become necessary before or after payment by us.

In no event, however, shall we exercise our rights of subrogation against an *insured person* under this Policy except where we have established that Exclusion 5.3. Conduct applies to such *claim* and that *insured person*.

Where we recover any amount following a paid *financial loss* under this Policy, the recovery, less the reasonable costs of making such recovery, will be applied to reinstate the *limit of liability*.

7.16 Territorial Scope of Cover

Cover under this Policy shall apply to:

7.16.1 *financial loss* incurred;

7.16.2 *claims* made;

7.16.3 *wrongful acts* committed; and

7.16.4 *pre-claim events* that occur,

within the Territorial Scope specified in the *schedule*, as permitted by law.

7.17 Non-disclosure and Misrepresentation Waiver

Where we have any rights in respect of fraudulent non-disclosure or fraudulent misrepresentation we agree not to rescind or avoid this Policy. In respect of any fraudulent non-disclosure or fraudulent misrepresentation, we will be entitled to reduce our liability to pay *financial loss* in respect of a *claim* or *investigation* by an amount equivalent to the financial prejudice we have suffered as a result of the fraudulent non-disclosure or fraudulent misrepresentation. Any such rights will only be exercised:

7.17.1 against an *insured person* who, before the *period of insurance*, knew the non-disclosure or misrepresentation was fraudulent, and any company to the extent that it may indemnify such *insured person*; and

7.17.2 against a *company* where any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or the holder of any equivalent position) of the company or the holder of any equivalent position in a jurisdiction, knew the non-disclosure or misrepresentation was fraudulent,

and only where the *claim* or *investigation* is based upon or arises from the facts or matters fraudulently not disclosed or fraudulently misrepresented.

In respect of any innocent non-disclosure or innocent misrepresentation, we waive any right we have reduce our liability to pay *financial loss* in respect of a *claim* or *investigation*.

7.18 Confidentiality

The existence and terms of this Policy will be confidential as between the *insured* and us and will not be published, disclosed or otherwise communicated except where:

7.18.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of an *insured persons* against a liability;

7.18.2 we consent in writing to disclosure of the existence and/or terms of this Policy; or

7.18.3 the *insured* is compelled by order of a court to do so.

7.19 Connectivity with the Companion policy

This Policy may connect with Zurich's Companion Directors and Officers Defence Costs and Expenses Insurance issued to the *policyholder* as defined in the *schedule*, where we have determined that a *statutory charge* prevents payment under this Directors and Officers Liability Insurance policy.

In the event that *defence costs* or expenses have been advanced or paid under Zurich's Companion Directors and Officers Defence Costs and Expenses Insurance, and it is subsequently determined (at our sole and absolute discretion) that such payment could have been paid under this Policy, the amount of such payment will be reimbursed from this policy to that Policy.

7.20 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.

7.21 Waiver of Privilege

If we instruct any lawyer to investigate or defend any *claim* against any *insured*, 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)

Trading as Zurich New Zealand

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