



# Financial Institutions Professional Indemnity Insurance

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..

## 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.

# Financial Institutions Professional Indemnity Insurance Policy Wording

In consideration of the payment of the premium, and in reliance upon the statements made in the *proposal*, and subject to the terms and conditions 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 *professional investigations*, *loss mitigation* or other Extensions of Cover first occurring during the *period of insurance* or the *extended reporting period* (if applicable) and notified to the Insurer as required by Section 6.1 of this Policy.

## 1. Insurance Clause

We shall indemnify the *insured* for *financial loss* resulting directly from a *claim* made against the *insured* during the *period of insurance* or the *extended reporting period*, if applicable, for a *wrongful professional act*, occurring on or after the *retroactive date*, in the rendering of or failure to render *professional financial services*.

## 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 shall indemnify the *insured* for all *professional investigation costs* resulting directly from a *professional investigation* arising from the rendering of or failure to render *professional financial services*.

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

### 2.2 Employee Dishonesty

We shall indemnify the *company* for any *financial loss* resulting from a *claim* for *employee dishonesty* first made during the *period of insurance* or the *extended reporting period*, if applicable, and arising from the rendering of or failure to render *professional financial services*.

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

### 2.3 Loss Mitigation

We will pay to or on behalf of the *company* any *mitigation costs* incurred during the *period of insurance* provided that:

- 2.3.1 notification of the relevant *wrongful professional act* or *employee dishonesty* is made to and accepted by us in accordance with Section 6.1.2 of this Policy;
- 2.3.2 if such *wrongful professional act* or *employee dishonesty* notified in clause 2.3.1 above were to give rise to a *claim*, such *claim* would be covered under this Policy;
- 2.3.3 as a condition precedent to the payment of *mitigation costs* and before incurring any *mitigation costs*, the *insured* demonstrates to us the reasonableness and necessity of the proposed actions and costs to mitigate or avoid a covered *claim*, and the Insurer provides its express prior written consent for such *mitigation costs*, except as provided for in Extension 2.6 'Emergency Costs'; and
- 2.3.4 as a condition precedent to the payment of *mitigation costs*, we shall be entitled to associate fully with the *insured* in relation to the proposed actions before they are undertaken and shall be kept fully updated on the *potential claim*.

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

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

Cover under this Extension shall not extend to any fact or circumstance based upon, arising from or in consequence of any *wrongful professional act* or *employee dishonesty* or the same or related *wrongful professional act* or *employee dishonesty* where all or any part of such acts or conduct occurred prior to the inception date of this Policy, or any fact or circumstance which any *insured* had knowledge as of the inception date of this Policy.

#### 2.4 Loss of Documents and Data

We shall indemnify the *insured* for the reasonable and necessary fees, costs and expenses incurred, with our prior consent, in connection with replacing or restoring *documents* belonging to a third party for which the *insured* is legally liable for their custody and safekeeping and which during the *period of insurance* have been destroyed, damaged, lost, distorted, or erased provided that such loss or damage is sustained while the *documents* are in the custody of an *insured* or of any person to whom an *insured* has entrusted them in the course of rendering *professional financial services*.

We shall not be liable under this Extension for any costs and expenses directly or indirectly arising out of or in connection with a *cyber event*, operational wear and tear, gradual deterioration, moth or vermin.

The burden of proof that the *documents* have been the subject of a diligent search shall remain with the *insured*.

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

#### 2.5 Defamation

We shall indemnify the *insured* for *financial loss* resulting from a *claim* first made against the *insured* during the *period of insurance* or the *extended reporting period*, if applicable, based upon libel, slander, offence or injurious falsehood committed unintentionally by an *insured* on or after the *retroactive date* and prior to the end of the *period of insurance* within the provision of *professional financial services*.

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

#### 2.6 Emergency Costs

We shall indemnify the *emergency costs* incurred by an *insured*.

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*.

#### 2.7 Heirs, Estates, Legal Representatives and Domestic Partners

The heirs, estates, legal representatives, assigns, spouses and natural person qualifying as a domestic partner of an *employee* under the provisions of any applicable law or under the provisions of any formal program established by the *insured*, shall be considered an *employee* under this Extension, but only for a *claim* solely arising out of their status as such and resulting from a *wrongful professional act* of an *employee*, and in the case of a spouse or domestic partner, where such *claim* seeks damages from marital community property, jointly held property or property transferred from the *employee* to the spouse or domestic partner.

No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or domestic partner. All terms and conditions of this Policy applicable to *financial loss* incurred by *employee* shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partner.

#### 2.8 Vicarious Liability

We shall indemnify the *insured* for *financial loss* resulting from any *claim* made against the *insured* during the *period of insurance* or the *extended reporting period*, if applicable, but based upon a *wrongful professional act* of an *outside service provider* involved in the provision of or failure to provide *professional financial services* of or on behalf of the *insured* and for whom the *insured* is held vicariously liable.

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

#### 2.9 Civil and Administrative Fines and Penalties

We will pay *civil fines and penalties* imposed on an *employee* that arise from a covered *claim* or *professional investigation*, but only to the extent that such *civil fines and penalties* are insurable under both the law applicable to this Policy and the jurisdiction in which such *civil fines and penalties* are imposed.

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

## 2.10 Extended Reporting Period

### 2.10.1 Cancellation or Non-Renewal

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

- (a) automatically for thirty (30) 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.

### 2.10.2 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 2.10.1 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.

This Extension of cover shall not apply to *mitigation costs*.

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

- (i) the renewal of this Policy by us; or
- (ii) the 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*.

## 3. Changes in Risk

### 3.1 Changes in Subsidiary

If an entity ceases to be a *subsidiary* during the *period of insurance*, cover for any *claim* made against the *insured* for *wrongful professional acts* as is provided under this Policy with respect to such *subsidiary* and its *employees* shall continue until termination of this Policy, provided always that:

- 3.1.1 such *claim* results from *wrongful professional acts* committed or events taking place in their entirety prior to the date of such cessation or liquidation; and
- 3.1.2 such *claim* is first made during the *period of insurance*; and
- 3.1.3 only the *insured*, not the relevant *subsidiary*, remains legally or contractually liable for such *claim*.

### 3.2 New Subsidiaries

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

- 3.2.1 has annual revenues for the last complete accounting period prior to the acquisition which are greater than fifteen (15) percent of the consolidated total annual revenue that the *policyholder* declared at the inception of this *period of insurance* or reported in the latest audited annual report,
- 3.2.2 is incorporated, domiciled or providing *professional financial services* in the United States of America or Canada or any of their territories; or

- 3.2.3 perform professional services that significantly differ from the *professional financial services* which the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, provided prior to such acquisition or creation;
- 3.2.4 had during the last five (5) years any loss or claim that that may have been covered under this Policy for an amount exceeding fifty per cent (50%) of the applicable *retention* under this Policy.

If a newly acquired or created *subsidiary* falls into clause 3.2.1 to 3.2.4 above, such entity will be covered under this Policy, but only for a period of thirty (30) days from the date the *policyholder* either directly or indirectly through one or more of its *subsidiaries* first acquired or created such *subsidiary*, 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 extend coverage 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) gives us sufficient details to permit 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.

Unless otherwise agreed and attached as an endorsement to this Policy, cover under this Policy for such *subsidiary* first acquired or created after the inception of this Policy shall only apply for *wrongful professional 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

The cover provided by this Policy shall only apply in respect of *wrongful professional 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*.

## 4. Definitions

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

### 4.1 Bodily injury

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

### 4.2 Breach costs

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

- 4.2.1 conduct computer forensic analysis to investigate the *company's computer system*;
- 4.2.2 determine indemnification obligations under any written contract with respect to a *wrongful professional act* by an *outside service provider*;
- 4.2.3 determine if the *insured* is obligated to notify potentially affected individuals or applicable regulatory agencies;
- 4.2.4 effect compliance with any (i) *GDPR proceeding*, or (ii) *privacy regulation*;
- 4.2.5 notify potentially affected individuals or applicable regulatory agencies and establish new account numbers for the *company's* potentially affected individuals;

- 4.2.6 plan, implement, execute, and manage a public relations campaign to attempt to counter or minimise any actual or anticipated adverse effects of negative publicity, or to attempt to protect or restore the *company's* business reputation in response to negative publicity,
- 4.2.7 provide credit and identification monitoring services, identification restoration services, and identification theft insurance (provided we shall have no obligation to apply for or furnish such insurance) for potentially affected individuals; or
- 4.2.8 provide call centre services to handle inquiries from potentially affected individuals, in responding to or in connection with any *security event*.

### 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 *company'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 Fines and Penalties

*civil fines and penalties* mean civil monetary penalties and fines directly assessed by an *official body* against an *employee* for personal civil liability arising out of the provision or failure to provide *professional financial services*, but only if such fines and penalties are not relating to or resulting from a knowing, wilful or criminal violation of law.

### 4.5 Claim

*claim* means:

- 4.5.1 a written demand, commenced by 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 an *outside service provider* or an *insured* other than an *employee* acting in the capacity as customer of an *insured*;
- 4.5.2 a civil proceeding, commenced by the service of a complaint or similar pleading; or



4.5.3 a regulatory or administrative proceeding, commenced by the filing of a notice of charges or similar document;

4.5.4 an arbitration proceeding against any *insured*, or mediation or other dispute resolution process; brought by, on behalf of or for the benefit of a third-party client of any *insured* seeking compensation for a specified *wrongful professional act* of an *insured*.

In respect of Extension 2.2 'Employee Dishonesty', *claim* shall solely mean a civil proceeding commenced by a third-party client of the *insured* or a regulatory or arbitration proceeding commenced on behalf of a third party client of the *insured* for compensatory damages resulting from such *employee dishonesty*.

For the purposes of Sections 5, 6 and 7 only, *claim* shall also mean *professional investigation*, *potential claim* and the event insured under Extension 2.4 'Loss of Documents and Data'.

#### **4.6 Company**

*company* means:

4.6.1 the *policyholder*; and

4.6.2 any *subsidiary*.

*Company* does not mean any *investment entity*.

#### **4.7 Company's computer system**

*company's computer system* means a *computer system*:

4.7.1 owned, leased or operated by the *company*;

4.7.2 which an *outside service provider* operates for and on behalf of the *company*;

4.7.3 which is owned by the *company's employees* and operated by them on behalf of the *insured* for the purpose of obtaining remote access to the *company's computer system* or otherwise operated pursuant to the *insured's* 'bring your own device' policy,

to provide *professional financial services*.

#### **4.8 Computer system**

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

#### **4.9 Cyber event**

*cyber event* means:

4.9.1 a *privacy event*; or

4.9.2 a *security event*.

#### **4.10 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, fees or overhead of an *insured*) incurred with our prior consent, after a *claim* is made against the *insured*:

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

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

- 4.10.3 by or on behalf of the *insured* in conducting any proceeding for indemnity, contribution or recovery relating to such *claim*; or
- 4.10.4 by or on behalf of 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*.

*Defence costs* shall not include:

- (i) *professional investigation costs*;
- (ii) any fees, costs, charges and expenses incurred by the *company* in connection with any direction or request by an *official body* to provide them with a report on a matter or appoint a person to provide them with a report on a matter under Section 166 or 166A of the Financial Services and Markets Act 2000 (as enacted in the United Kingdom) or any equivalent or similar legal or regulatory provision in any other jurisdiction.

#### 4.11 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).

#### 4.12 Document

*document* means records or documents of any nature, including computer records and *electronic data*.

*Document* does not include any bill of exchange, cheque, currency, draft, letter of credit, money order, promissory note, cryptographic or digital assets or currency, cryptographic key material providing access to digital currency systems, or other negotiable instruments including any records thereof.

#### 4.13 Electronic data

*electronic data* means information stored or transmitted in digital format usable in a *computer system*.

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

#### 4.14 Emergency costs

*emergency costs* means that part of *defence costs*, *mitigation costs* or *professional investigation costs* incurred by the *insured* prior to receiving our consent when such prior consent cannot reasonably be obtained in a timely manner in relation to a *claim*, and for which we shall provide retroactive approval for such costs in accordance with Section 6.4 of this Policy.

#### 4.15 Employee

*employee* means:

- 4.15.1 a natural person who during the *period of insurance* or after the *retroactive date* performs *professional financial services* on behalf 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 *professional financial services*; or
- 4.15.2 a natural person seconded to the *company*, or guest student pursuing studies or duties or any person engaged in work experience or on a training scheme with the *company* while working under their direct control and supervision.

*Employee* shall not include any:

- (i) *director or officer* of the *company*, unless when:
  - (a) performing acts within the scope of the usual duties of an employee (other than a *director or officer*) providing *professional financial services* to or for the *company* under a contract of employment and under the *company's* direct control and supervision; or
  - (b) while acting as a member of a committee duly elected or appointed by resolution of the board of directors of the *company* to perform specific *professional financial services*, as distinguished from general directorial acts, on behalf of the *company* and working under the direct control and supervision of the *company*; or
- (ii) *outside service provider*; or
- (iii) independent contractor or independent agents or broker, independent financial adviser, tied agent or any similar agent or independent representative remunerated on sales or commission basis, external lawyers or solicitors or employees of independent valuation firms.

#### **4.16 Employee dishonesty**

*employee dishonesty* means fraudulent or dishonest intentional conduct by an *employee* with the intent to obtain an improper personal financial gain for himself or herself, but only if such conduct

4.16.1 was not committed by or condoned, either expressly or implicitly, by the *company* or any of its *directors or officers*; and

4.16.2 results in liability of the *company* to others which is established by a judgment or other final, non-appealable adjudication or proceeding.

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

#### **4.17 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 for a *wrongful professional act*, or a *professional investigation* first occurring or arising prior to the expiration of the *period of insurance*.

#### **4.18 Extortion payments**

*extortion payments* means:

4.18.1 any monies and cryptographic or digital assets or currency paid by the *insured* for the purpose of terminating an extortion threat; and

4.18.2 all expenses incurred by an *insured* relating to an extortion threat.

#### **4.19 Financial loss**

*financial loss* means:

4.19.1 the total amount the *insured* is legally liable to pay for:

- (i) compensatory, punitive, exemplary or multiple damages (to the extent insurable under the law of this Policy and the law of the jurisdiction in which the payment is to be made) and related costs (including pre-judgment and post-judgment interest, plaintiff's or claimant's legal fees, attorney's fees and expenses, court costs, accountant's costs and loss adjuster's costs) 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*;
- (ii) compensation for damages awarded by an *official body*, or
- (iii) a settlement negotiated by the *insured* with our prior consent; or

4.19.2 *professional investigation costs* resulting from a *professional investigation*; or

4.19.3 *defence costs*; or

4.19.4 the fees, costs, expenses and amounts covered under Extension 2.3 'Loss Mitigation', 2.4 'Loss of Documents and Data' and 2.9 'Civil and Administrative Fines and Penalties', in Section 2 of this Policy.

Notwithstanding the above, *financial loss* does not include any of the following:

- (a) wages, salaries or other remuneration or any employment related benefits paid by or to any *insured*;
- (b) social or pension benefits or contributions or other employment related benefits;
- (c) any amount for which the *insureds* are absolved from payment by reason of any covenant, agreement or court order;
- (d) any amount that constitutes return by the *insured* of fees, commissions, or royalties, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, setoff or otherwise, and injuries that are a consequence of any of the foregoing; or re-performance of services by the *insured* or under the *insured's* supervision;
- (e) any amount that constitutes loss or deprivation of fees, income or profits by the *insured*, including interests and dividends or loss or rights and privileges
- (f) the cost, fees or expenses to comply with any injunctive, declaratory, affirmative, or other non-monetary relief or any agreement to provide any such relief;
- (g) non-compensatory, punitive, exemplary, multiple or aggravated damages and the multiplied portion of multiplied damages;
- (h) taxes and levies of any type, fines or penalties, including but not limited to such imposed as a result of a *GDPR proceeding* or any other similar legal or administrative proceeding in relation to data protection legislation in any other jurisdiction, imposed upon any *insured*, except as provided under Extension 2.9 'Civil and Administrative Fines and Penalties';
- (i) *breach costs*;
- (j) *extortion payments*;
- (k) disgorgement, reimbursement or restitution of any kind;
- (l) amounts that constitute contractual penalties or *liquidated damages*; or
- (m) any sum payable pursuant to a financial support direction or contribution notice issued by a pension regulator;
- (n) benefits due or owed under any contract;
- (o) any punitive, exemplary, compensatory or consequential damages and costs or settlements incurred by the *insured* outside or in excess of its insured's or reinsured's limit of indemnity arising from a *wrongful professional act*; or
- (p) amounts or loss which are deemed uninsurable under the law pursuant to which this Policy shall be construed or in the jurisdiction where the *claim* is made or brought.

#### 4.20 Fund

*fund* means any trust, investment trust, investment fund, investment management company (open or closed ended), managed investment scheme, partnership, undertaking for collective investment, private equity or venture capital fund, real estate fund, other fund, sub-fund, compartment, mandate or other similar entity sponsored, created or promoted by a *company*, but does not include any employee benefit, pension, welfare benefit, share option or share saver plan or charitable fund or foundation maintained by the *company* for the benefit of the past, present and or future employees or their respective beneficiaries on or after the inception date of this Policy.

#### 4.21 GDPR

*GDPR* means the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto. *GDPR* shall also include any state, provincial, territorial, local, or federal regulations enacted in furtherance of or pursuant to implementation of the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto.

#### 4.22 GDPR proceeding

*GDPR proceeding* means a formal investigation of or an administrative adjudication proceeding against an *insured* concerning the *GDPR* by an administrative or regulatory agency, including an appeal thereof, commenced by the *insured's* receipt of a subpoena, investigative demand, complaint or similar document.

#### 4.23 Insured

*insured* means any:

4.23.1 *company*; or

4.23.2 *employee*.

#### 4.24 Interrelated Wrongful Professional Acts

*interrelated wrongful professional acts* mean *wrongful professional 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.

#### 4.25 Investment entity

*investment entity* means:

4.25.1 any not-for-profit entity; or

4.25.2 any entity in which one or more *funds* holds or held securities (convertible bond, debenture, share, stock, ADR or other equity security), whether registered and traded or not in a public market, or other debt or equity interest, or is performing or has performed due diligence in anticipation of making an investment of its capital in such entity; or

4.25.3 any special purpose vehicle (SPV), special purpose entity (SPE) or structured investment vehicle (SIV).

#### 4.26 Limit of Liability

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

#### 4.27 Liquidated damages

*liquidated damages* mean damages that are specified and/or agreed in a contract or written agreement, including compensation for breach of contract specifically agreed under a warranty or similar clause.

#### 4.28 Mental anguish

*mental anguish* means mental injury, mental distress, emotional distress, emotional pain, and emotional suffering or shock, whether or not resulting from *bodily injury*.

#### 4.29 Mitigation costs

*mitigation costs* mean the reasonable and necessary:

4.29.1 fees, direct costs and expenses; or

4.29.2 other loss,

incurred by the *insured*, with our prior consent, following the first discovery of a *wrongful professional act* or *employee dishonesty* 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 against the *insured* arising from such *wrongful professional act* or *employee dishonesty*.

*Mitigation costs* does not include:

- (a) costs related to any liability which would not otherwise be covered under this Policy;
- (b) any increase in the liability of or the *financial loss* of the *insured* arising from taking such actions;
- (c) *breach costs*;
- (d) *extortion payments*;
- (e) the remuneration of any *employee*, 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* by the potential claimant.
- (g) the amount of any applicable *retention*;
- (h) costs or expenses or other amounts covered under Extension 2.4 'Loss of Documents and Data'.

#### **4.30 Official body**

*official body* means any government, governmental or administrative body or agency or similar public body with authority over the *professional financial services* of the *insured*, that has the legal authority to regulate, control, supervise, conduct *professional investigations*, perform audits, assess and levy 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 or professional body that is empowered by statute or statutory regulation to perform the above functions.

#### **4.31 Outside service provider**

*outside service provider* means any person or financial institution or other entity providing services to financial institutions that is not an *insured* and that performs *professional financial services* of or on behalf of the *insured*, at the direction of the *insured* and pursuant to a written contract or agreement which defines the scope of the *professional financial services* to be performed.

#### **4.32 Period of insurance**

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

#### **4.33 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.

#### **4.34 Policyholder**

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

#### **4.35 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.

#### 4.36 Potential claim

*potential claim* mean a *claim* that, if made against the *insured*, would be covered under this Policy in respect of which the *insured* incurs *mitigation costs* under Extension 2.3 'Mitigation Costs' in order to mitigate, minimise, prevent or otherwise avoid *financial loss* that would otherwise be covered under this Policy.

#### 4.37 Privacy event

*privacy event* means an actual or alleged:

4.37.1 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;

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

4.37.3 failure by the *insured* to comply with that part of its public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information* that specifically:

- (i) prohibits or restricts the *insured's* disclosure, sharing or selling of *personal information*;
- (ii) requires the *insured* to provide an individual access to *personal information* or to correct incomplete or inaccurate *personal information* after a request is made; or
- (iii) mandates procedures and requirements to prevent the loss of *personal information*,

provided the *insured* has in force, at the time of such failure, such a policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information*.

#### 4.38 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.

#### 4.39 Professional investigation

*professional investigation* means any formal civil, administrative or regulatory investigation, hearing, examination or inquiry commenced or brought by an *official body* concerning:

4.39.1 the affairs of the *company* in the provision of or failure to provide *professional financial services*; or

4.39.2 an *employee* acting in his capacity as such,

where no *wrongful professional act* has been specified, once an *employee* of the *company* is identified in writing and receives formal written notice from an *official body* requiring such *employee* to cooperate or attend, or to produce documents, provided that:

- (a) such formal written notice from an *official body* first arises during the *period of insurance* or *extended reporting period* (if applicable);
- (b) the *professional investigation* concerns acts or conduct or a *wrongful professional act* that occurs after the inception date of this Policy and the *retroactive date*; and
- (c) the *insured* has notified us of such formal written notice from an *official body* in accordance with Section 6.2 of this Policy.

*Professional investigation* does not mean any routine regulatory supervision, inspection or compliance reviews, or any industry wide investigation, hearing, examination or inquiry which focuses on five (5) or more industry actors rather than the *insured*.

#### 4.40 Professional investigation costs

*professional investigation costs* means reasonable and necessary fees, costs, charges and expenses incurred, with our prior consent (except as provided for under Extension 2.6 'Emergency Costs') for or on behalf of an *employee* or the *employee's* legal representative:

4.40.1 in preparing for, attending or producing documents to a *professional investigation*; or

4.40.2 in responding to a raid on, or on-site visit to, any *insured* by an *official body* that involves the production, review, copying or confiscation of files or interviews of any *insured*.

*Professional investigation costs* shall not mean any fees, costs, charges or expenses incurred by the *company* in connection with a *professional investigation*, remuneration of *employees*, costs of their time or costs of overheads of the *company*.

#### 4.41 Professional financial services

*professional financial services* means any financial services provided by or on behalf of the *insured* to a third party client pursuant to a written contract or agreement with such third party client for compensation, or in conjunction with services for compensation, including any related service or operation of the *insured* to support the provision of such services provided, however that:

(i) the *professional financial services* are allowed under applicable laws, statutes, rules, regulations issued by any *official body* having jurisdiction over the *insured*; and

(ii) the *insured* providing such *professional financial services* is duly authorised, licensed and/or approved to provide such *professional financial services*.

*Professional financial services* do not include the rendering or failure to render tax services to an *investment entity*.

#### 4.42 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.

#### 4.43 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.

#### 4.44 Responsible officer

*responsible officer* means any natural person who has been, now is, or shall become a partner, *director or officer*, general counsel, head of legal, compliance officer, departmental director, internal auditor, risk manager, insurance manager, head of information and data security, or equivalent of the *company*.

#### 4.45 Retention

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

#### 4.46 Retroactive date

*retroactive date* means the date specified in the *schedule*.

#### 4.47 Schedule

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

#### 4.48 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:

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

4.48.2 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.



#### 4.49 Software

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

#### 4.50 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*.

#### 4.51 Subsidiary

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

4.51.1 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);

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

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

For the purposes of determining cover, an entity shall only be deemed a *subsidiary* with respect to *wrongful professional acts* committed subsequent to the date that such entity first became a *subsidiary* and prior to the date such entity ceased to be a *subsidiary*.

#### 4.52 Wrongful Privacy Act

*wrongful privacy act* means any act, error, omission, neglect, or breach of duty actually or allegedly committed or attempted by an *insured* in the course of rendering *professional financial services* that results in or arises from a *privacy event*.

#### 4.53 Wrongful Professional Act

*wrongful professional act* means:

4.53.1 any act, error, omission, misrepresentation, misstatement, misleading statement, neglect, or breach of duty;

4.53.2 a *wrongful security act*; or

4.53.3 a *wrongful privacy act*,

actually or allegedly committed or attempted by an *insured*, in connection with the rendering or failure to render *professional financial services* to others.

#### 4.54 Wrongful Security Act

*wrongful security act* means any act, error, omission, neglect, or breach of duty actually or allegedly committed or attempted by an *insured* that results in or arises from a *security event*.

## 5. Exclusions

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

### 5.1 Anti-Trust

arising from, based upon, in connection with, attributable to or as a consequence of any actual or alleged violation of any anti-competitive, anti-trust, unfair competition, or restraint of trade law, legislation or regulation.

## 5.2 Assumed liability, Guarantee, Warranty

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

- 5.2.1 liability assumed or accepted by an *insured* or an *outside service provider* under any contract or agreement except to the extent that actual legal liability would have attached to an *insured* or *outside service provider* in the absence of such contract or agreement as a matter of civil or common law as applicable; or
- 5.2.2 any guarantee or warranty.

## 5.3 Bodily injury and Property damage

alleging, arising from, based upon, in connection with, attributable to or as a consequence of, directly or indirectly, *bodily injury*, *mental anguish*, *property damage* or the violation of any person's right of privacy; provided, that this exclusion shall not apply to

- 5.3.1 loss of *documents* or data, in accordance with Extension 2.4 'Loss of Documents and Data'; or
- 5.3.2 *mental anguish*:
  - (i) in accordance with Extension 2.5 'Defamation'; or
  - (ii) arising from a *wrongful privacy act*.

## 5.4 Conduct

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

- 5.4.1 an *insured* or an *outside service provider* gaining any profit, remuneration or financial or non-financial benefit or advantage to which such *insured* or *outside service provider* was not legally entitled;
- 5.4.2 any *wrongful professional act* which was deliberately committed;
- 5.4.3 the committing of any criminal, dishonest, fraudulent or malicious acts or omission by an *insured* or an *outside service provider*; or
- 5.4.4 any knowing or wilful violation or breach of any statute, regulation or law by an *insured* or an *outside service provider*,

where the conduct referred to in clauses 5.4.1 to 5.4.4 above is determined by:

- (a) a formal written admission by the *insured* or the *outside service provider*;
- (b) a judgment or other final, non-appealable adjudication or proceeding adverse to the *insured* or the *outside service provider*; or
- (c) evidence establishing that the conduct did in fact occur.

Until such admission or determination, *defence costs* shall be advanced by us pursuant to Section 6.2. Further, the conduct referred to in clauses 5.4.1 to 5.4.4 committed by any *company* or *outside service provider* shall not be attributed to any *employee* unless such *employee* was complicit in such conduct.

This exclusion shall not apply to Extension 2.2 'Employee Dishonesty'.

## 5.5 Governmental regulatory action

alleging, based upon, in connection with, attributable to or as a consequence of any action or investigation brought by, in the right of, on behalf of or at the behest of, or instigated or maintained against an *insured* by an *official body* or any other government, regulatory or licensing authority or commission, whether directly or indirectly, and whether brought in its capacity as an *official body* government, regulatory or licensing authority or commission, or as a receiver, conservator, liquidator, securities holder or assignee of an *insured*, provided, that this exclusion shall not apply to:

- 5.5.1 a *claim* by such entity when acting solely in its own interests in its capacity as a customer or client of an *insured*;
- 5.5.2 a *claim* brought by such entity by, on behalf of or for the benefit of a third party client of any *insured* seeking compensation for a specified *wrongful professional act* of an *insured*;

5.5.3 *civil fines or penalties covered* under clause 4.20.4 of the definition of *financial loss*; or

5.5.4 *professional investigation costs* covered under Extension 2.1 'Professional Investigations'.

## 5.6 Insolvency

alleging, arising from, based upon, in connection with, attributable to or as a consequence of the bankruptcy, insolvency, financial default, liquidation, receivership or liquidation of an *insured* or an *outside service provider*.

## 5.7 Insured vs. Insured

brought or instigated by or on behalf of, or for the benefit of:

5.7.1 any *insured*, or successors or assigns of any *insured*;

5.7.2 any entity owned, controlled, operated or managed by the *insured* at the time the *wrongful professional act* giving rise to such *claim* was committed (or alleged to have been committed); or

5.7.3 the *policyholder's* parent company, or any subsidiary or affiliate or other entity that is operated or controlled by the *policyholder's* parent company at the time the *wrongful professional act* giving rise to such *claim* was committed (or alleged to have been committed),

unless such *claim*:

(a) is brought by or on behalf of an *employee* solely in the capacity as a client or customer of the *company* and is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*;

(b) is brought by or on behalf an *insured*, other than a *fund*, for contribution, indemnity or recovery, if such *claim* directly results from another *claim* originating from an independent third party which is otherwise covered under this Policy and as long as such *claim* is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention by any other *insured*. Cover under this Policy shall be limited to that part of *financial loss* which consists of compensation for damages incurred by that third party and for which the *insured* is legally liable, and shall exclude any other or additional *financial loss*, costs or expenses incurred by the *insured*; or

(c) is brought by a *fund* for contribution or indemnity, if such *claim* directly results from another *claim* originating from an independent third party, as long as such *claim* is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention by any other *insured*, and where failure to make such a *claim* would have otherwise resulted in the *fund* incurring a statutory liability or a subsequent *claim* by a third party;

5.7.4 any entity that controls, operates or manages or wholly or partly owns the *insured* at the time the *wrongful professional act* giving rise to such *claim* took place; or

5.7.5 any shareholder, bondholder or a holder of any similar corporate securities, benefit or obligation of the *insured* in their capacity as such, unless brought as a client or customer of the *insured*.

## 5.8 Outside service provider

brought or instigated by or on behalf of, or for the benefit of any *outside service provider* in relation to contractual agreements, indemnification, compensation, or disputes over the services provided by such *outside service provider* or with respect to the scope of *professional financial services* performed by such *outside service provider* as defined in the contractual agreement with the *insured*.

## 5.9 Intellectual property

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

5.9.1 the invalidity, infringement, violation, dilution, breach or misappropriation of any patent, intellectual property right, copyright, trade or service mark; or

5.9.2 the misappropriation of any trade secret.

## 5.10 Nuclear and Pollution

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

- 5.10.1 the hazardous properties of nuclear material including but not limited to the actual, alleged, threatened or potential:
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (ii) radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 5.10.2 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* at any time; or
- 5.10.3 any claim, suit, direction or request that any *insured* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants*, or any voluntary decision to do so.

This exclusion applies whether or not such *pollutants* have any function in the *insured's* business, operations, premises, site or location and regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any *financial loss* associated with such *pollutants*.

## 5.11 Prior and Pending Claims or Notifications

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

- 5.11.1 any act, fact, same or related *wrongful professional act, professional investigation, employee dishonesty*, fact, event, circumstance, situation, or *claim* which has been the subject of any written notice given under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy;
- 5.11.2 any act, error or omission or *wrongful professional act, professional investigation, employee dishonesty*, fact, event, circumstance, situation, or *claim* occurring, initiated, committed or commenced prior to:
- (i) the inception date of this Policy or of any policy issued by us to the *policyholder* of which this Policy is a continuous renewal or replacement, which a *responsible officer* became aware, knew or could have reasonably foreseen that could give rise to a *claim* or coverage under this Policy; or
  - (ii) the *retroactive date*;
- 5.11.3 any written demand, suit or proceeding, order, decree or judgment entered, against any *insured*, or *professional investigation* pending or initiated or commenced on or prior to the inception date of this Policy or of any policy issued by the Insurer to the *policyholder* of which this Policy is a continuous renewal or replacement;
- 5.11.4 any *interrelated wrongful professional acts* or *professional investigation, employee dishonesty* or loss of *documents* and data (as covered under Extension 2.4 'Loss of Documents and Data') which has the same originating cause as any item referenced in clauses 5.11.1, 5.11.2 or 5.11.3 above; or any *mitigation costs* relating to the foregoing.

## 5.12 Uncontrollable events

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

- 5.12.1 civil unrest, including but not limited to protests, striking employees, riots and looting;
- 5.12.2 war, terrorism, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;
- 5.12.3 emergency governmental actions, including but not limited to embargos, or any seizure, confiscation, expropriation, nationalisation or destruction of a *computer system* by such governmental authority, including without limitation any damage or loss to *property* or *documents* as a result of such action;

- 5.12.4 failure, interruption, or outage to Internet access provided by the internet service provider to the and/or any resulting lack of functionality in any online services, failure of telephone lines, data transmission lines, satellites, or other infrastructure comprising or supporting the Internet unless such infrastructure is under the *insured's* operational control;
- 5.12.5 fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, pandemic, epidemic or any other similar event however caused;
- 5.12.6 mechanical failure, *software* failure, faulty construction, design error, latent defect, wear or tear, gradual deterioration, electrical disturbance, *storage media* failure or breakdown, *electronic data* processing failure or breakdown, or any malfunction or inadvertent error in programming or inadvertent errors or omissions in processing;
- 5.12.7 mechanical or electrical failure or interruption caused by a third party, acting independently of the *company*, or by an event outside of the *company's* control, including any electrical power, communication or other utility interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuations; or
- 5.12.8 any actual and measurable interruption, suspension, voluntary or regulatory shutdown, failure, degradation or delay in the performance of an *outside service provider's computer system* arising or resulting from a *cyber event*, including any liability to the *outside service provider* itself.

### 5.13 Fees and Commissions

- 5.13.1 for reimbursement, restitution or disgorgement of fees, profits, commissions, premiums, taxes, costs or other compensation paid to, payable to, owed, due to or claimed for any *professional financial services* rendered or required to be rendered by an *insured* or an *outside service provider*, or that portion of any settlement or award in an amount equal to such fees, profits, commissions, premiums costs or other compensations or that constitutes restitution or reimbursement; or
- 5.13.2 for the actual or alleged charging of excessive, undisclosed or otherwise improper fees, profits, commissions, premiums, taxes, costs or other compensation by the *insured* or an *outside service provider*.

### 5.14 Merger and Acquisition

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

- 5.14.1 merger, consolidation, purchase or acquisition of another business by the *insured*; or
- 5.14.2 divestment or sale of assets or business by the *insured*; or
- 5.14.3 purchase or sale transactions in the shares of the *policyholder*, the *insured's* parent company or any *subsidiary*,

except when the *insured* is acting on behalf of a client of the *insured*, or where the *insured* has authority to manage the funds of a client.

### 5.15 Money laundering or Related financial crime

arising out of, based upon, in connection with, attributable to or as a consequence of, directly or indirectly, any actual or alleged money laundering or related financial crime which the *insured* knew or reasonably should have known constituted money laundering or related financial crime. For the purposes of this exclusion, money laundering or related financial crime has the meaning given to that term (or the term used for an equivalent offence) under any statute, law, rule regulation, or international treaty, convention or accord pertaining to the movement of illicit cash or cash equivalent proceeds.

### 5.16 Tax planning

arising out of, based upon, in connection with, attributable to or as a consequence of relating to or involving, directly or indirectly, any actual or alleged tax planning, tax evasion, tax investment advice or tax shelter arrangements.

### 5.17 Business risk

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

- 5.17.1 any transaction or change in value of any account, where the *insured* is acting on its own behalf or as principal, including any proprietary trading loss, financial loss or a business loss; or
- 5.17.2 any liability under a contract of insurance or reinsurance to pay benefits indemnity due to an *insured's* capacity as the insurer or re-insurer of such contract of insurance or reinsurance.

### 5.18 Diminution in value

alleging, arising out of, based upon, attributable to, as a consequence of or in any way involving, directly or indirectly:

- 5.18.1 diminution in value (or failure to appreciate) of any investments including *securities*, money, currencies, options, futures transactions, commodities, *property*, property or any other item of value, or
- 5.18.2 any actual or alleged representation, advice, guarantee or warranty provided by or on behalf of the *insured* as to the performance of any such investments, or
- 5.18.3 the loss of value, surrender value or cancellation value of any leased product or service, except when such diminution or loss of value (or failure to appreciate) is caused solely by a *wrongful professional act* of an *insured* in the execution or implementation of *professional financial services*.

### 5.19 Directors and Officers

arising out of, based upon, in connection with, attributable to or as a consequence of the *insureds* performance or non-performance of their functions and duties in their capacity as a *director or officer*, manager, trustee, partner, employee or member of any entity other than a *company*, except where a *claim* is made against an *insured* for a *wrongful professional act* arising from the provision of directorial services, including but not limited to the provision of individuals or corporate entities to act as directors to third party companies, but only where such services constitute *professional financial services*.

### 5.20 USA Specific exclusions

alleging, arising out of, based upon, relating to or attributable to any actual or alleged:

- 5.20.1 violation, by the *insured* or *outside service provider*, of the Racketeer Influenced and Corrupt Organisations Act 18 USC Section 1961 as amended, and regulations promulgated there under;
- 5.20.2 violation, by the *insured* or *outside service provider*, of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and any regulations promulgated there under where the *insured* is acting as a trustee, fiduciary or administrator of any pension, profit sharing or employee benefit plan maintained by the *insured* for the benefit of its past, present and future *employees* or their respective beneficiaries;
- 5.20.3 violation, by the *insured* or *outside service provider*, of the Securities Act of 1933, or the Securities and Exchange Act of 1934 as amended, and regulations promulgated there under; or
- 5.20.4 violation, by the *insured* or *outside service provider*, of the Fair Credit Reporting Act (FCRA) and any amendment of or addition to such law including the Fair and Accurate Credit Transactions Act (FACTA),

when such *claim* or *professional investigation* is brought or commenced (or for the purposes of Extension 2.3 'Loss Mitigation', would likely be commenced) in whole or in part within the jurisdiction of or pursuant to the laws of, the United States of America or its territories or possessions.

## 6. Notification, Defence, Settlement and Indemnification

### 6.1 Notification of Claims or Circumstances

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 a *responsible 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* or *professional investigation*.

6.1.2 If during the *period of insurance*, a *responsible officer* shall become aware of any *wrongful professional act* or other circumstance which may reasonably be expected to give rise to a *claim* being made against an *insured*, they shall give written notice to us of such *wrongful professional act* or circumstance. If such notice is accepted by us, any *claim* which is subsequently made against such *insured* and reported to us which alleges, arises out of, or is based upon or attributable to such *wrongful professional act* or circumstance which is the same as or related to any *wrongful professional act* or circumstance reported in that notification, shall be considered made at the time such notice was received by us and such *claim* shall be subject to the terms, conditions and remaining *limits of liability*, if any, of this Policy.

Written notice under this section shall include, but not be limited to, the reasons for anticipating such a *claim* with full particulars as to dates, persons and entities involved, the nature of the *wrongful professional act* and any actual or possible injury or damages, if known; and the date and manner in which the *insured* first became aware of the *wrongful professional act*.

6.1.3 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 notify the circumstance to us as set out in clauses 6.1.2 above; and
- (b) 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
- (c) the *insured* shall always keep us informed as set out in clauses 6.1.1 and 6.1.2 to the fullest extent permitted by the *official body* during this disclosure limitation and afterwards provide full details as requested by the Insurer once this limitation is removed.

6.1.4 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.

6.1.5 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, except where the *financial loss* is not reasonably expected to exceed 50% of the applicable *retention*, and except as provided under Extension 2.6 '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 it may reasonably require enabling it 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 *insured* 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 *employee* or between any *employee* and the *company*.

### 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 us, in accordance with Section 6.1 through to 6.3 of this Policy, within seven (7) days of such costs being incurred; and
- 6.4.2 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
- 6.4.3 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 to 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 professional 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*.

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 Limit of Liability

The *limit of liability* shall be our maximum liability, in the aggregate, payable under this Policy for all *financial loss*.

The *sub-limits of liability* form part of, and are not in addition to, the *limit of liability*. Where more than one *sub-limits of liability* applies to any *financial loss* payable under the terms of this Policy, only one *sub-limits 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 single *claim*, fees, costs, expenses and amounts set out in Extensions 2.3 'Loss Mitigation', 2.4 'Loss of Documents and Data' and 2.9 'Civil and Administrative Fines and Penalties', that is in excess of the applicable *retention* specified in the *schedule*.

The *retention* is not part of our *limit of liability*. The *retention* is to be borne by the *company* and shall remain uninsured, other than if insured by a *subsidiary*. If more than one *retention* is applicable to a 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 the *policyholder* agrees to act on behalf of each *insured* with respect to giving and receiving notices of *financial loss* 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 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* or circumstance knowing same to be false or fraudulent, as regards amount or otherwise, such *financial loss* shall be excluded from the Policy for the fraudulent *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 Other insurance, Order of payments and Non-Stacking of Limits

If a *financial loss* covered under this Policy is also covered, wholly or partially, by any other valid and collectable insurance policy, this Policy shall only apply 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.

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

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

#### **7.10 Policy Interpretation and Jurisdiction**

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

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

- 7.10.1 headings are descriptive only, not an aid to interpretation;
- 7.10.2 singular includes the plural, and vice versa;
- 7.10.3 the male includes the female and neuter;
- 7.10.4 all references to specific legislation include amendments to and re-enactments of such legislation; and
- 7.10.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

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

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

#### **7.11 Representations**

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

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

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

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

#### **7.12 Subrogation and Recoveries**

Upon any payment on any *claim* we shall be entitled to assume all rights of recovery available to any *insureds* or the *company*.

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 5.11 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.

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

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

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

Interests on amounts recovered from third parties shall be allocated proportionally to the amounts paid according to (a), (b), (c) and (d) above.

If we agree not to exercise our rights of recovery against an *insured person* in connection with a *claim* unless we have established that Exclusion 5.4 Conduct applies to such *claim* and that *employee*.

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*.

### 7.13 Sanctions regulation

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

### 7.14 Territorial Scope of Cover

Cover under this Policy shall apply to:

- 7.14.1 *financial loss* incurred;
- 7.14.2 *claims* made; and
- 7.14.3 *wrongful professional acts*,

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

- 7.15 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..

### 7.16 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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