

Directors and Officers Liability Insurance

Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy. This is a 'claims made' liability insurance policy. It only provides cover if a claim is made against the insured, by some other person, during the period of insurance.

The policy does not cover prior and pending claims or investigations (subject to Extension 2.14 'Continuous cover'). See Exclusion 5.4 'Prior and pending' for details.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period of insurance, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the insured notifies the insurer of the matter as soon as reasonably practicable after the insured becomes aware of the occurrence or fact and before this policy expires, the insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured prior to the end of the period of insurance.

If the insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the insured will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Zurich may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the wrongful acts alleged in it may have taken place during the period of insurance.

If a claim is actually made against the insured by some other person during the period of insurance but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, 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, and mid-sized and large companies, including multinational corporations.

Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract 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 *submission*, which is the information provided to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured.

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

Zurich Directors and Officers Liability Insurance – Policy Wording

Subject to payment of the *premium* set out in the schedule, we agree with the *insured* to provide insurance in accordance with the terms, conditions and exclusions of this policy.

1. Insuring clauses

1.1 Directors and Officers liability cover

We will pay to or on behalf of an *insured person* any *financial loss* which arises from a *claim* made against such *insured person*, except to the extent that the *insured person* has been indemnified by the *company* for such *financial loss*.

1.2 Company reimbursement cover

We will pay to or on behalf of the *company* any *financial loss* of an *insured person* which arises from a *claim* made against such *insured person*, but only to the extent that the *company* has indemnified or agreed to indemnify such *insured person* for such *financial loss*

1.3 Company securities claims cover

We will pay to or on behalf of the *company* any *financial loss* which arise from a *securities claim* made against the *company*.

1.4 Investigation costs cover

We will pay to or on behalf of an *insured person* any *investigation costs* which arise from an *investigation*.

This policy only covers *claims* or *investigations* first made during the *period of insurance* or the *extended reporting period*, if applicable.

2. Extensions of Cover

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

Extensions Exclusively to Protect Insured Persons

With the exception of Extension 2.1 (Additional Non-Executive Director protection) and Extension 2.11 (Tax liability) we will pay any *financial loss* or reasonable and necessary fees, costs and expenses applicable under Extensions 2.1 to 2.12 to or on behalf of an *insured person* except to the extent that the *insured person* has been indemnified by the *company* in which case we will pay any applicable *financial loss* or reasonable and necessary fees, costs and expenses to or on behalf of the *company*.

2.1 Additional Non-Executive Director protection

We will pay under the *excess limit of liability*, *financial loss* of a *non-executive director* that arises from a *claim* made against such *non-executive director*, subject to the applicable additional *excess limit of liability* specified in the *schedule*.

2.2 Civil fines and penalties

We will pay *civil fines and penalties* imposed on an *insured person* that arise from a *claim* made against such *insured person*, but only to the extent that such *civil fines and penalties* are insurable under both the law to this policy and the jurisdiction in which such *civil fines and penalties* are imposed.

2.3 Deprivation of assets and liberty

We will pay to or on behalf of an *insured person* the reasonable and necessary professional fees, costs and expenses incurred, with our prior written consent in connection with a *deprivation of assets and liberty proceeding*.

2.4 Extradition expenses

We will pay to or on behalf of an *insured person* the reasonable and necessary professional fees, costs, charges and expenses incurred, with our prior written consent resulting solely from:

2.4.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting and/or defending any *extradition claim*;
- (b) appealing any order or other grant of *extradition* of that *insured person*; or
- (c) seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;

2.4.2 the appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant retained by the *insured person* exclusively and directly in connection with the *extradition* of that *insured person*. Provided that the 'appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant' *sub-limit of liability* specified in the *schedule* shall be our maximum liability in the aggregate for all such costs and expenses under this policy for all *insured persons*, spouses/partners and children, combined; or

2.4.3 travel and accommodation costs and living away from home expenses incurred by the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*. Provided that the 'travel and accommodation costs and living away from home expenses' *sub-limit of liability* specified in the *schedule* shall be our maximum liability in the aggregate for all such costs and expenses under this policy for all *insured persons*, spouses/partners and children, combined.

2.5 Insolvency hearing

We will pay to or on behalf of an *insured person* the reasonable and necessary professional fees, costs and expenses incurred, with our prior written consent, to retain legal advisors, separate to the *company*:

2.5.1 to advise such *insured person* in relation to any written request for information and documentation by any trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction); or

2.5.2 for an *insured person's* preparation for and attendance (following a request in writing) at, an interview with, or any formal or official hearing in connection with the investigation or inquiry into the affairs of a *company*, or an *insured person*, by any trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction),

where the facts underlying such written request, investigation or inquiry may give rise to a *claim* against such *insured person*. In no event shall such costs and expenses include the remuneration of any *insured person*, the costs of their time or any other costs or overheads of any *company*.

The cover provided under this Extension 2.5 'Insolvency hearing' shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.6 Insured Persons protection

We will pay for housing, utilities, personal insurances and schooling expenses, paid on behalf of an *insured person* directly to the provider of such services in the event of an interim or interlocutory order during the *period of insurance* for:

2.6.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*; or

2.6.2 a charge over real property or personal assets of such *insured person*,

resulting directly from or as part of a covered *claim* and provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

Such expenses will be payable from thirty (30) days following the order described above for a period of twelve (12) months from the date of the order.

2.7 Mitigation costs

We will pay the *mitigation costs* incurred by an *insured person* to minimise the risk of a *claim*, where it is reasonable to expect that a *claim* would otherwise be made against an *insured person*, but no such *claim* has yet been made. Any *mitigation costs* must be reasonably and necessarily incurred by an *insured person* to pay directly or indirectly to the potential third party claimant for the purpose of avoiding a *claim*. All *mitigation costs* require our prior consent before being paid.

The cover provided under this Extension 2.7 'Mitigation costs' shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.8 Personal reputation crisis

We will pay the reasonable and necessary professional fees, costs and expenses incurred by such *insured person*, with our prior written consent in connection with the services of a public relations / crisis management consultant (who shall not be a law firm) retained solely, and independently from the *company*, by the *insured person* within thirty (30) days of the *personal reputation crisis* to specifically mitigate the adverse publicity to such *insured person's* professional reputation as a direct result of the *personal reputation crisis*, subject to and not to exceed the applicable additional *limit of liability* specified in the *schedule*.

2.9 Pre-Claim event

We will pay to or on behalf of an *insured person* the reasonable and necessary professional fees, costs and expenses incurred, with our prior written consent, by such *insured person* in retaining advisors separate from the *company* or an *outside entity*:

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

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

2.10 Retired Directors and Officers lifetime protection

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

2.10.1 the *period of insurance* of this policy; or

2.10.2 the period of insurance of any other directors and officers insurance policy issued by us to the *policyholder* of which this policy is a continuous renewal,

if this policy is not renewed or replaced or where such renewal or replacement does not specifically provide cover for such *directors and officers*.

This Extension will not apply to that portion of *financial loss* indemnified by a *company* or to any *directors or officers* who retired from their positions with the *company* by reason of, in connection with or after a *change in control*.

2.11 Tax liability

We will pay to or on behalf of an *insured person* his or her personal liability for the unpaid taxes of the *company* due to the *company's financial impairment*, except for any *superannuation guarantee charge*. Provided that we shall not cover any loss arising from the commission of an *insured person's* dishonest or fraudulent act or omission or any intentional violation or breach of any law or regulation.

2.12 Workplace health and safety

Notwithstanding Exclusion 5.1 'Bodily injury / property damage', we will pay to or on behalf of an *insured person* any *defence costs* which arise from any *claim* by an *official body* against such *insured person* or *investigation costs* in respect of an *investigation* in relation to any alleged breach of workplace health and safety laws, to the extent permitted by law. This Extension includes *defence costs* in relation to any *corporate manslaughter proceeding*.

Extensions of Cover for all Insureds

2.13 Company crisis

We will pay to or on behalf of the *company* the reasonable and necessary professional fees, costs and expenses incurred, with our prior written consent, by an external public relations / crisis management consultant (who shall not be a law firm) retained by the *policyholder* within thirty (30) days of a *company crisis* to specifically mitigate the adverse publicity or potential adverse publicity to the *company* as a direct result of the *company crisis*.

The maximum that we will pay in the aggregate under this Extension 2.13 'Company crisis' cover is the *sub-limit of liability* specified in the *schedule*.

2.14 Continuous cover

Notwithstanding Exclusion 5.4 'Prior and pending', and subject to Condition 6.10 'Non-disclosure and misrepresentation waiver', we will pay *financial loss* which arises from any *claim* or *investigation* first made against an *insured* during the *period of insurance* arising from a *prior known fact*, provided always that:

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

2.15 Cyber event

We will pay to or on behalf of:

- 2.15.1 an *insured person* under all applicable covers, or the *company* where it has indemnified an *insured person*; and/or
- 2.15.2 the *company* under Insurance Cover 1.3 and solely in connection with a *securities claim*, the *financial loss* which arises from a *claim* made against such *insured* in connection with a *cyber event*. A *cyber event* means a *security event* and/or a *privacy event*.

2.16 Cyber incident

Subject to Extension 2.15 'Cyber event' occurring:

2.16.1 Education & Training

We will pay for all reasonable and necessary costs and expenses of the *company* that arise from a *cyber event* for educational or training programs for any *director* or *officer* in connection with a covered claim made against an *insured*, subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.16.2 Loss of Data

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

2.17 Derivative demand investigation

We will pay the *derivative demand investigation costs* incurred by the *company* in connection with a *security holder derivative demand* subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.18 Emergency expenses

We will pay the *emergency costs* incurred by an *insured* with respect to a *claim* prior to our written consent, when such written consent cannot reasonably be obtained in a timely manner; subject to the applicable *sub-limit of liability* specified the *schedule*.

2.19 Environmental violation

We will pay to or on behalf of:

2.19.1 an *insured person* under all applicable covers, or the *company* where it has indemnified an *insured person*; and/or

2.19.2 the *company* pursuant to Insuring Clause 1.3 in connection with a *securities claim*, the *financial loss* that arises from an *environmental proceeding* made against such *insured*.

2.20 Extended reporting period (ERP)

2.20.1 Non-renewal

If the policy is not renewed by us or replaced (obtaining cover on terms which are more restrictive than this policy does not constitute non-renewal or non-replacement), the *policyholder* will be entitled to an *extended reporting period*:

- (a) of ninety (90) days at no additional premium, automatically; or
- (b) of twelve (12) months at the additional premium required by us.

The entitlement under (b) above will lapse unless the *policyholder* provides written notice of its election to take it up within thirty (30) days after the expiry of the *period of insurance*.

2.20.2 Change in control

In the event of a *change in control*, the *policyholder* may purchase an *extended reporting period* of up to eighty four (84) months to commence immediately following the expiry date of the *period of insurance*. The *policyholder* must make a written request for such *extended reporting period* no later than thirty (30) days after the *change in control* and pay the additional premium required (less any unearned premium for this policy).

2.20.3 Insured person ERP election

If the *policyholder* is entitled to but does not exercise an *extended reporting period* as described in 2.20.1 or 2.20.2 above, then any *insured person* will have the right to elect an *extended reporting period* of up to eighty four (84) months. The *extended reporting period* elected will only apply to *financial loss* of the *insured persons* who elected such *extended reporting period* arising from *claims* or *investigations* against such *insured persons*, and will not apply to:

- (a) any cover for the *company*;
- (b) any cover for any other *insured*; or
- (c) *indemnified financial loss*.

Only one *extended reporting period* will apply to all *insured persons* (combined) who elect the *extended reporting period* under this Extension.

The right of election under this Extension will lapse unless written notice of such election is given by the *insured person* to us within thirty (30) days after the *policyholder's* right to exercise the *extended reporting period* has expired. This Extension for each *insured person* is conditional upon the *insured persons* paying the applicable additional premium for the *extended reporting period* within ninety (90) days.

2.21 Indemnity costs for shareholder derivative claims

If the *company* is ordered by a court to pay the costs of claimant shareholders pursuing a derivative action against any *insured persons* (hereinafter '*indemnity costs for shareholder derivative claims*') then we will pay such costs to or on behalf of the *company*, provided that such derivative action is a *claim* otherwise covered under this policy.

2.22 Runoff cover for past subsidiaries

If an entity ceases to be a *subsidiary* at any time prior to or during the *period of insurance*, then cover under this policy shall continue to apply with respect to any *claim* made against such *subsidiary* and any *insured person* thereof first brought during the *period of insurance* or the *extended reporting period* (if applicable), but only in respect of *wrongful acts* or conduct:

2.22.1 committed prior to the date such entity ceased to be a *subsidiary*; and

2.22.2 committed during the time such entity was a *subsidiary*; and

2.22.3 otherwise covered under this policy.

3. Definitions

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

3.1 Bodily injury

bodily injury means bodily injury, sickness, disease or death of any person resulting therefrom, and shall include mental anguish or emotional distress.

3.2 Change in control

change in control means an event occurring, with the result that any person, entity or group:

3.2.1 acquires more than 50% of the *policyholder's* share capital;

3.2.2 acquires the majority of the voting rights in the *policyholder*;

3.2.3 assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;

3.2.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*;

3.2.5 merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or

3.2.6 is appointed as a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, or administrator (or similar official or person appointed for the *policyholder* or the equivalent in any other jurisdiction) or becomes a debtor in possession (or the equivalent status in any applicable jurisdiction), if any.

3.3 Civil or bail bond expenses

civil or bail bond expenses means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

3.4 Civil fines and Penalties

civil fines and penalties mean:

3.4.1 civil, administrative or regulatory monetary penalties directly assessed against an *insured person* for a violation of any law, regulation or statute; and

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

3.5 Claim

claim means:

- 3.5.1 (a) a written demand for monetary damages or non-monetary or injunctive relief;
- (b) a civil, administrative, regulatory or arbitration/mediation proceeding or suit or alternative dispute resolution proceeding, including any counter-claim commenced by the service of a statement of claim, summons or similar pleading, or receipt of filing of a notice of charges;
- (c) a criminal proceeding alleging a *wrongful act*, including any counter claim commenced by the service of the return of an indictment, information or similar document,
- against an *insured person* for a *wrongful act*; and

claim also includes:

- 3.5.2 an *investigation, corporate manslaughter proceeding, security holder derivative demand, securities claim, employment practices wrongful act and extradition claim.*

For the purposes of the interpretation of the terms and conditions of this policy, the term *claim* shall also include a *pre-claim event*.

3.6 Clean up costs

clean up costs means reasonable professional fees, costs and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying, reducing, remediating or assessing the effects of *pollutants* or greenhouse gases.

3.7 Company

company means:

- 3.7.1 the *policyholder*;
- 3.7.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy); and
- 3.7.3 any foundation or charitable trust established and controlled by the *policyholder* or any *subsidiary* of the *policyholder*, other than any pension or superannuation fund, trust or scheme.

3.8 Company crisis

company crisis means:

- 3.8.1 a *claim* made against an *insured* during the *period of insurance* under this policy that we reasonably believe will exceed AUD \$5,000,000 in damages over and above the *deductible* of the relevant Insuring Clause to which the *claim* relates; or
- 3.8.2 the unforeseen death during the *period of insurance* of a key individual that we deem will have a significant adverse impact on the *company's* financial performance.

A *company crisis* shall end once the external public relations or crisis management consultant advises the *company* that such *company crisis* no longer exists or six (6) months after the event in 3.8.1 or 3.8.2 (whichever is applicable), whichever occurs first.

3.9 Continuity date

continuity date means:

- 3.9.1 for *insured persons*, the Continuity date for Insured persons specified in the *schedule*; and
- 3.9.2 for the *company*, the Continuity date for the Company specified in the *schedule*.

3.10 Corporate manslaughter proceeding

corporate manslaughter proceeding means a formal criminal proceeding against an *insured person* for manslaughter (including but not limited to involuntary, constructive or grossly negligent manslaughter) in their capacity as such for the *company* and directly related to the business of the *company*.

3.11 Deductible

deductible means the amounts specified as such in the *schedule* that will be the responsibility of the *company*, as applicable, to pay in respect of *financial loss* covered under the applicable Insuring Clause or Extension of this policy.

3.12 Defence costs

defence costs mean reasonable and necessary legal and other professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *company* or an *outside entity*, cost of their time or costs or overheads of the *company* or an *outside entity*), incurred with our prior written consent in the investigation, defence, settlement or appeal of any *claim* made against an *insured*.

Defence costs will also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved with our prior written consent to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Defence costs do not include *investigation costs*.

3.13 Deprivation of asset and liberty proceeding

deprivation of asset and liberty proceeding means any proceeding brought against an *insured person* by an *official body*, resulting directly from or as part of a covered *claim* or *investigation*, seeking an order for:

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

3.14 Derivative demand investigation costs

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

3.15 Director or Officer

director or officer means:

- 3.15.1 any natural person who is a past, present or future director, officer, management committee member, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in a *foreign jurisdiction*;
- 3.15.2 any natural person who is a past, present or future *shadow director* of the *company*;
- 3.15.3 any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *company*;
- 3.15.4 any *director or officer* defined in 3.15.1 to 3.15.3 above, who is, was or becomes a member of the *company's* internal audit committee, or any other internal committee of the *company*;

- 3.15.5 any *employee* of the *company* who is a past, present or future corporate general counsel or risk manager (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director* or *officer* of the *company* defined in 3.15.1 to 3.15.4 above; and
- 3.15.6 any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the *company*.

3.16 Emergency costs

Emergency costs mean that part of *defence costs*, *investigation costs*, *pre-claim costs*, *extradition costs* or the costs in respect to a *deprivation of asset and liberty proceeding* incurred by the *insured* prior to receiving our written consent when such prior written consent cannot reasonably be obtained in a timely manner in relation to a *claim*, and for which we shall provide retroactive approval, provided that notification is made to us within thirty (30) days of such costs being incurred and in accordance with Section 6.5 of this policy.

3.17 Employee

employee means a natural person while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service. The definition of *employee* shall not include independent contractors or agents.

3.18 Employment practices wrongful act

employment practices wrongful act means:

- 3.18.1 a *claim* based on any actual or alleged act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of the *company*; or
- 3.18.2 a proceeding, investigation or charge brought by or before the Australian Human Rights Commission (or similar body in any *foreign jurisdiction*).

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

3.19 Environmental event

environmental event means:

- 3.19.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or greenhouse gases into or on real or personal property, water or the atmosphere; or
- 3.19.2 any direction or request that the *company* or *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or greenhouse gases, or any voluntary decision to do so, whether or not such greenhouse gases are *pollutants*.

3.20 Environmental proceeding

environmental proceeding means any *claim* based upon, arising out of or attributable to an *environmental event* if and to the extent such *claim*:

- 3.20.1 is a *securities claim*;
- 3.20.2 is an *employment practices wrongful act*; or
- 3.20.3 is against an *insured person* for *wrongful acts* in connection with an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes.

3.21 Excess limit of liability

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

3.21.1 the *limit of liability* of this policy;

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

3.21.3 any and all indemnification available to any *non-executive director or officer*.

3.22 Extended reporting period

extended reporting period means the period specified in Extension 2.20 'Extended reporting period (ERP)' during which written notice may be given to us of any *claim* first made during such period for a *wrongful act*, or of any *investigation*, in connection with facts, acts or events, first occurring or arising prior to the expiry of the *period of insurance or change in control*.

Any *extended reporting period* shall:

(a) commence immediately from expiry of the *period of insurance or change in control*, as applicable; and

(b) terminate immediately on the effective date of:

(i) the renewal of this policy by us; or

(ii) the placement of any directors and officers or management liability contract of insurance issued by any other insurer which effectively replaces or renews the coverage provided by this policy, either in whole or in part.

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

3.23 External administrator

external administrator means any liquidator, receiver, receiver and manager, administrator, controller or holder of similar office or position in any jurisdiction whether appointed under the provisions of Part 5 of the Corporations Act 2001 (Cth) or any other law in a *foreign jurisdiction*.

3.24 Extradition

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

3.25 Extradition claim

extradition claim means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1988 (Cth) or similar legislation in any *foreign jurisdiction*.

3.26 Financial impairment

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

3.26.1 the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee in bankruptcy, administrator, deed administrator, statutory manager (or equivalent official or person in the applicable jurisdiction) to take control of, supervise, manage or liquidate the *company*;

3.26.2 the appointment by or on behalf of the *company* of administrators (or the equivalent status in the applicable jurisdiction); or

3.26.3 the *company* being placed into receivership or liquidation.

3.27 Financial institution

financial institution means any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company (other than a captive owned by the *policyholder*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

3.28 Financial loss

financial loss means the total amount the *insured* is legally liable and obligated to pay resulting from a *claim* made against such *insured* for which coverage applies, including but not limited to:

- 3.28.1 damages and judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees and/or their reasonable costs, charges and expenses arising from the *claim* awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) which any *insured* becomes legally liable to pay;
- 3.28.2 sums payable for any settlement entered into in accordance with the provisions of this policy to which we have consented;
- 3.28.3 *defence costs*; and
- 3.28.4 the fees, costs and expenses set out in the Extensions to this policy, in Section 2.;

Financial loss does not include:

- (i) any amount not indemnified by the *company* for which the *insureds* are absolved from payment by reason of any covenant, agreement or court order;
- (ii) any damages award as a result of an *employment practices wrongful act claim* for which the *company* and an *insured person* are jointly liable to pay, except where the *company* is unable to pay such damages award due to *financial impairment*;
- (iii) taxes (other than those covered under Extension 2.11 'Tax liability' and Condition 5.8 'Goods and service tax');
- (iv) criminal fines and penalties;
- (v) social security contributions or employment related benefits;
- (vi) fines and pecuniary penalties that we are legally prohibited from paying, or are uninsurable or are imposed by law for a deliberate or intentional breach of law or any matter deemed uninsurable or prohibited under the law applicable to this policy;
- (vii) any amount incurred by the *company* that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a *company* in connection with its purchase of any securities or assets;
- (viii) payments that are uninsurable under the law pursuant to which this policy shall be construed;
- (ix) remuneration payable to any *insured*, cost of any *insured's* time or costs or overhead of any *company* or of any *outside entity*;
- (x) disgorgement or ill-gotten gains;
- (xi) *clean up costs*; or
- (xii) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Australian Prudential Regulation Authority or similar.

Notwithstanding the foregoing, *financial loss* shall include:

- (a) *employee* (other than *directors or officers*) compensation (other than bonus) owed by the *company*, to the extent that:
 - (i) it is determined by law that the *directors or officers* are personally liable for such compensation; and
 - (ii) it is not *indemnifiable financial loss*; and
 - (iii) the *company* has become insolvent or is under *financial impairment*.
- (b) punitive, exemplary or multiple damages, with respect to any *claim*, if and only to the extent that such damages are insurable under the laws of the applicable jurisdiction most favourable to the *insureds*, including without limitation the jurisdiction in which the *company*, the *insured persons*, this policy issued by us or such *claim* is located.

3.29 Foreign jurisdiction

foreign jurisdiction means any jurisdiction other than Australia.

3.30 Foreign policy

foreign policy means, in relation to a *foreign jurisdiction*, the most recently revised standard form of wording for a directors and officers policy of insurance issued by Zurich or our affiliate in such *foreign jurisdiction* that provides substantially similar coverage to the coverage provided by this policy.

3.31 Indemnified financial loss

indemnified financial loss means *financial loss* of the *insured person* which the *company* is required to and not prohibited from indemnifying, unless the *company* fails or refuses to indemnify the *insured person* due to *financial impairment*.

3.32 Insured

insured means:

- 3.32.1 any *insured person*; and
- 3.32.2 the *company* but only with respect to a *securities claim* and Extensions 2.13 through to 2.22.

3.33 Insured person

insured person means any:

- 3.33.1 *director or officer*;
- 3.33.2 *outside entity executive*;
- 3.33.3 *employee* of the *company*, other than a *director or officer*, in relation to:
 - (a) any *securities claim*;
 - (b) *employment practices wrongful act*; or
 - (c) all other *claims*, provided that such *claim* is also made concurrently, against a *director or officer*.

Insured person also means any lawful spouse or domestic partner (including same sex relationships) of any *insured person* listed in 3.33.1 to 3.33.3 above, and estates, heirs or legal representatives of any *insured person* listed in 3.33.1 to 3.33.3 above with respect to *wrongful acts* by such *insured person* committed prior to the death, incapacity, insolvency or bankruptcy of the *insured person*, provided that such estates, heirs or legal representatives are subject to the terms, conditions and exclusions of this policy in so far as they can apply.

For the avoidance of doubt, this policy will not cover any *claim* arising out of any act, error or omission of any spouse, domestic partner, estate, heir or legal representatives.

Insured person will not include any agent, contractor, consultant, external auditor, trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, administrator or receiver and manager (or similar official or person appointed for the *policyholder* or the equivalent in any other jurisdiction) of the *company*.

3.34 Internal investigation

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

- 3.34.1 appear at a meeting or interview (including a request to provide a written response); or
- 3.34.2 produce documents, records or electronic information that concerns an *insured person* in their insured capacity,

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

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

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

3.35 International program policies

international program policies mean the policy(ies) specified as such in the *schedule*.

3.36 Interrelated wrongful acts

interrelated wrongful acts mean all *wrongful acts* that have as a common link any fact, circumstance, situation, event, transaction, cause or source or series of causally connected facts, circumstances, situations, events, transactions, causes or sources.

3.37 Investigation

investigation means a formal or official criminal, administrative or regulatory investigation, examination, hearing or inquiry:

- 3.37.1 of an *insured person* commenced by the arrest and detainment or incarceration for more than twenty-four (24) hours of such *insured person* by any law enforcement authority, including within a *foreign jurisdiction*.
- 3.37.2 into the affairs of the *company* or an *insured person*, commenced by or brought by an *official body*, once an *insured person* is required in writing (including by the service of a target letter or Wells Notice) by the *official body* to:
 - (a) attend an interview; or
 - (b) provide information but only where there are reasonable grounds to anticipate that a *claim* may be made against that *insured person* by such *official body* in connection with the subject matter of the information request.

Investigation does not include industry-wide or sector investigations, examinations, hearings, enquiries or any routine regulatory audit, examination, inspection or review.

An *investigation* is deemed to be 'first made' when the *insured person* is first so required or requested to attend in writing, first so served or first so arrested and detained.

3.38 Investigation costs

investigation costs mean reasonable and necessary professional fees, costs, charges and expenses incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* required participation in an *investigation* including reasonable preparation for any required interview or provision of information.

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

3.39 Limit of liability

limit of liability means the amounts specified as such in the *schedule* which shall be our maximum liability, in the aggregate, payable under this policy for all covered *financial loss*, subject to the terms and conditions of this policy.

3.40 Mitigation costs

mitigation costs mean the reasonable and necessary payments made with our prior written consent to a potential claimant, other than the *company* or an *outside entity*, including reasonable professional fees and costs incurred by the *insured person*, to reduce the ultimate civil legal liability of an *insured person* provided that all payments, fees and costs are incurred by the *insured person*, in order to avoid *claims* being made by the potential claimant for a *wrongful act*.

In no event shall *mitigation costs* include:

- (i) liability which would not otherwise be covered under this policy;
- (ii) payments arising out of, based upon or attributable to an *investigation* or *pre-claim event*;
- (iii) payments to a potential claimant to reduce the ultimate civil legal liability of a *company*, whether incurred by the *company* or by an *insured person* on behalf of the *company*;
- (iv) the remuneration of any *insured person*, the costs of their time or any other costs or overheads of any *company*; or
- (v) any payment which exceeds the coverage provided under this policy if the *claim* had been made against the *insured person* by the potential claimant.

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

3.41 Non-Executive Director

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

3.42 Non-profit organisation

non-profit organisation means any company or legal entity established for any charitable, community, social or industry purpose or for the provision of services or benefits to its members and not for the purpose of making profits.

3.43 Official body

official body means:

- 3.43.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or *external administrator* legally empowered to conduct an *investigation* into the affairs of the *company* or *outside entity*, or the conduct of an *insured person* in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; and
- 3.43.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities*.

3.44 Outside entity

outside entity means any:

3.44.1 *non-profit organisation*; or

3.44.2 for profit entity,

but excluding any:

- (i) *financial institution*;
- (ii) entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or
- (iii) other entity (other than a *non-profit organisation*) that had negative net worth at the commencement date of this policy,

unless such *financial institution* or entity is specified as an *outside entity* in an endorsement to this policy.

3.45 Outside entity executive

outside entity executive means any *director or officer* or *employee* of the *company* who:

3.45.1 did or will serve or act; or

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

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

3.46 Period of insurance

period of insurance means the period of time specified as the Period of Insurance in the *schedule* including any extension thereto agreed in writing by us.

3.47 Personal information

personal information means any information from which an individual may be reasonably identified or contacted, including an individual's name, telephone number, email address, tax file number, medicare number, medical or healthcare data or other protected health information, driver's license number or bank account number, credit card number, debit card number, access code or password that would permit access to that individual's financial accounts or any other non-public personal information as defined in *privacy regulations*.

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

3.48 Personal reputation crisis

personal reputation crisis means any negative statement specifically regarding and mentioning an *insured person* made by any individual authorised to speak on behalf of an *official body* that is included in any press release or published in any print or electronic media outlet. The *personal reputation crisis* must first arise during the *period of insurance* and must relate to a *claim* or an *investigation*. A *personal reputation crisis* shall be deemed to first arise when such press release or publication was first released.

3.49 Policyholder

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

3.50 Pollutants

pollutants mean any solid, liquid, gaseous irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, toxic mould or any thermal irritant or contaminant, ionising radiation or radioactivity from any nuclear fuel and waste (waste includes, but is not limited to, nuclear waste or materials which are intended to be or have been recycled, reconditioned or reclaimed) and any other similar substance of any kind or nature whatsoever including electromagnetic fields, asbestos, asbestos products and any noise.

3.51 Pre-claim costs

pre-claim costs mean reasonable and necessary professional fees, costs, charges and expenses incurred, with our prior written consent, by an *insured person* in retaining advisors separate from the *company* or an *outside entity*:

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

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

Provided that *pre-claim costs* shall not include *indemnified financial loss*, nor form part of the definition of *indemnified financial loss*.

3.52 Pre-claim event

pre-claim event means with respect to an *insured person* in their capacity as such:

- 3.52.1 a raid on, or on site visit, to any *company* or any *outside entity* by an *official body* that involves the production, review, copying or confiscation of documents or interviews of such *insured person*;
- 3.52.2 a communication from an *official body* to an *insured person* requesting the production, review, copying or confiscation of documents or interviews of such *insured person* that does not constitute an *investigation*;
- 3.52.3 any *self-report* alleging *wrongful acts* by an *insured person*; or
- 3.52.4 an *internal investigation* or inquiry conducted by the *company* at the request or instruction of an *official body* following a *self-report* or formal notification given pursuant to 3.52.3.

Provided that such raid, visit, communication from an *official body*, *self-report* or *internal investigation* must first take place or first occurs during the *period of insurance*, or *extended reporting period* if applicable.

A *pre-claim event* shall be deemed to be 'first made' against an *insured* when such raid, visit, *self-report* or *internal investigation* first took place, commenced, was notified or occurred.

A *pre-claim event* shall not include industry-wide or sector investigations, hearings, examinations or inquiries or any routine or regular regulatory audit, examination, inspection or review.

3.53 Prior known fact

prior known fact means any fact or matter which:

- 3.53.1 an *insured person* first became aware of, after the *continuity date*, but prior to the commencement of the *period of insurance*; and
- 3.53.2 the *insured person* knew, at any time after the *continuity date* but prior to the commencement of the *period of insurance*, may result in an allegation against the *insured* of a *wrongful act*.

3.54 Privacy event

privacy event means:

- 3.54.1 an unauthorised modification, 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 not available or known to the general public;
- 3.54.2 a violation of any *privacy regulation*; or
- 3.54.3 the unauthorised or wrongful collection of *personal information*.

3.55 Privacy regulation

privacy regulation means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of *personal information*, or any other legislation, regulation or by-law associated with identity theft or privacy.

3.56 Property damage

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

3.57 Schedule

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

3.58 Securities

securities mean any bond, debenture, note, share, stock, American Depository Receipts or other equity or security for debt which is issued or given by the *company*, and includes any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items.

3.59 Securities claim

securities claim means any:

3.59.1 written demand for damages or other legal remedy or civil proceeding commenced directly or derivatively by a past or present holder of *securities* of and issued by the *company*, in that holder's capacity as a security holder in the *company*; or

3.59.2 a regulatory proceeding commenced by any *official body*, but only in connection with the purchase, sale, or offer to purchase or sell *securities* of and issued by the *company*,

which alleges a *wrongful act* involving the violation of securities laws.

A *securities claim* shall include any *US securities claim* and/or a *claim* brought by or on behalf of any director, officer or employee of a *company* alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any *securities* (including warrants or options).

3.60 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:

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

3.60.2 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.

3.61 Security holder derivative demand

security holder derivative demand means:

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

3.61.2 any lawsuit by a *security holder* of a *company*, brought derivatively on behalf of such *company*, against an *insured person* for a *wrongful act* without first making a demand as described in 3.61.1 above.

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

3.62 Self report

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

3.63 Shadow director

shadow director means any person who has not been validly appointed as a director, if:

3.63.1 they act in the position of a director; or

3.63.2 the directors of the *company* are accustomed to act in accordance with the person's instructions or wishes.

However, a person is not a shadow director pursuant to paragraph 3.63.2 above, merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the *company* or body.

3.64 Sub-limit of liability

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

3.65 Submission

submission means:

- 3.65.1 any information and/or statements or materials;
- 3.65.2 any proposal form signed, dated and completed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 3.65.3 the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

3.66 Subsidiary

subsidiary means any entity in which the *policyholder* directly or indirectly:

- 3.66.1 holds more than 50% of the voting rights;
- 3.66.2 holds more than 50% of the issued share capital or equity; or
- 3.66.3 has the right, pursuant to a written agreement with other shareholders, to appoint or remove a majority of the board of directors (or equivalent in any other country),

and any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the applicable Australian accounting standard (or equivalent legislation and accounting standards in a *foreign jurisdiction*).

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

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

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

3.67 Superannuation guarantee charge

superannuation guarantee charge means an *insured person's* personal obligation to pay a superannuation guarantee charge to the Australian Taxation Office pursuant to Section 5 of the Superannuation Guarantee Charge Act 1992 (Cth).

3.68 US claim

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

- 3.68.1 within the jurisdiction of; or
 - 3.68.2 pursuant to the laws of,
- the United States of America or Canada or their territories and/or possessions.

3.69 US securities claim

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

- 3.69.1 within the jurisdiction of; or
 - 3.69.2 pursuant to the laws of,
- the United States of America or Canada or their territories and/or possessions.

3.70 Wrongful act

wrongful act means any act or omission occurring before or during the *period of insurance*, including but not limited to (or with respect to a shareholder 'derivative action', any proposed) breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful act or omission committed or attempted by or allegedly committed or attempted by:

3.70.1 any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *company* or any matter claimed against such *insured person* solely by reason of his/her status as such, but only with respect to a *claim* under Insuring Clauses 1.1 and 1.2; or

3.70.2 the *company*, but only with respect to a *securities claim* under Insuring Clause 1.3.

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

4. Changes in Risk

4.1 Changes in subsidiaries

If before or during the *period of insurance* an entity ceases to be a *subsidiary*, coverage as is provided under this policy with respect to such *subsidiary* and its *insured persons* shall continue until termination of this policy (or any continuous renewal of this policy by us) but only with respect to *wrongful acts* or other acts, facts or events covered under this policy which occurred, commenced or arose, subsequent to the date that such entity first became a *subsidiary* and prior to the date such entity ceased to be a *subsidiary*.

4.2 Change in control

The cover provided by this policy shall only apply in respect of *wrongful acts* or other events covered by this policy committed or occurring prior to the effective date of a *change in control*.

The *policyholder* shall give written notice to the Insurer of such *change in control* as soon as reasonably practicable, however no later than thirty (30) days after the *change in control*.

Notwithstanding the above, if a *change in control* results from a management buyout, we may, at our discretion, extend cover to apply in respect of *wrongful acts* committed or occurring after the effective date of a *change in control* for a period of sixty (60) days and solely with respect to any individual who was an *insured person* prior to the *change in control*.

4.3 New subsidiaries

The definition of *company* will be automatically extended to include any *subsidiary* which the *policyholder* first either directly or indirectly through one or more of its *subsidiaries* acquires or creates after the inception of this policy unless such *subsidiary*:

4.3.1 has total consolidated assets which are greater than twenty-five per cent (25%) of the total consolidated assets of the *policyholder* (last audited annual report), or

4.3.2 has *securities* publicly traded on any *securities* exchange in the United States of America; or

4.3.3 is a *financial institution*.

If a newly acquired or created *subsidiary* falls into 4.3.1 to 4.3.3 above, such entity will be covered under this policy, but only for a period of ninety (90) 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 at our discretion extend coverage for any such new *subsidiary* beyond the ninety (90) day period provided that the *policyholder*:

- (a) requests an extension of this policy for such *subsidiary* in writing to us; and
- (b) provide 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 at our discretion.

Unless otherwise agreed in writing 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 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*.

4.4 Public offering of Securities in the USA

If during the *period of insurance* the *policyholder* or any *subsidiary* announces its intention to make, or undergoes, a public offering(s) of its *securities* on a market or exchange located in the United States of America then we shall not be liable to make any payment for *financial loss* in connection with any *claim* alleging, arising from, based upon, attributable to or as a consequence of such intended or actual offering of *securities*, unless the *company* agrees to any amendments to this policy and pays any additional premium required by us related to such offering. The *policyholder* will make a written request for such coverage within thirty (30) days following the public announcement of such offering.

5. Exclusions

We shall not be liable under this policy for any *financial loss* in respect of:

5.1 Bodily injury / property damage

any *claim* for *bodily injury* and/or *property damage* except that cover shall be provided for:

- 5.1.1 *financial loss* which is not *indemnifiable financial loss*;
- 5.1.2 a *securities claim*;
- 5.1.3 an *environmental proceeding*;
- 5.1.4 mental anguish or emotional distress in connection with any *employment practices wrongful act*; or
- 5.1.5 *financial loss* otherwise covered under Extension 2.12 'Workplace health and safety'.

5.2 Conduct

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

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

Part 5.2.1 of this exclusion shall not apply in a *securities claim* against an *insured person* alleging violations of Sections 11, 12 or 15 of the United States of America Securities Act of 1933 to the portion of any *financial loss* attributable to such violations.

For the avoidance of doubt, this exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the Corporations Act 2001 (Cth) applies.

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

For the purpose of determining the applicability of this exclusion:

- (a) no conduct or knowledge of an *insured* shall be imputed to any other *insured person*; and
- (b) only the conduct and knowledge of any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or holder of any equivalent position) of the *company* shall be imputed to the *company*, for the purposes of Insuring Clause 1.3.

5.3 Insured vs insured US claims only

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

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

5.4 Prior and pending

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

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

6. Conditions

6.1 Assignment

Any rights under this policy will not be assigned without our prior written consent.

6.2 Cancellation

This policy may not be cancelled by us except in accordance with section 60 of the Insurance Contracts Act 1984 (Cth) including for non-payment of premium. If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 80% 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*:

- 6.2.1 during the *extended reporting period*, once elected;
- 6.2.2 after the *policyholder* undergoes a *change in control*.

6.3 Confidentiality

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

- 6.3.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability;
- 6.3.2 we consent in writing to disclosure of the existence and/or terms of this policy; or
- 6.3.3 the *insured* is compelled by order of a court to do so.

6.4 Deductible and coinsurance

6.4.1 The *deductible* will apply to the *insured persons* for *indemnified financial loss* and the *company* for all *financial loss*.

We will be liable only for the amount of *financial loss* which arises from a *claim*, or is in respect of a *company crisis*, that exceeds the *deductible* applicable to such *claim* or *company crisis*. The *deductible* is not part of our *limit of liability*. The *deductible* is to be borne by the *company* and will remain uninsured.

Irrespective of the number of *insureds* claimed against, a single *deductible* will apply to all *financial loss* in respect of any one *claim*, or two or more *claims* arising from one *wrongful act* or from a series of *interrelated wrongful acts*.

6.4.2 The *company* will bear uninsured and at its own risk the securities claim co-insurance percentage specified in the *schedule* of all *financial loss* payable under Insuring Clause 1.3, up to the *limit of liability*. This is in addition to the applicable *deductible*.

6.4.3 No *deductible* will apply to any *claim*, and we will reimburse those *defence costs* incurred by the *insured* to the extent not already paid by us, if:

- (a) the *claim* is dismissed without any payment by or on behalf of the *insured*;
- (b) there is a final judgment of no liability in favour of the *insured*, whether by settlement to which we have consented or by summary judgment, and without any payment by or on behalf of the *insured*; or
- (c) there is a final judgment of no liability obtained after trial, in favour of the *insured*, after the exhaustion of all appeals.

Any reimbursement under this clause will only occur if, sixty (60) days after the date of dismissal or final judgment of no liability is obtained, there is no further *claim* brought based on the same *wrongful act* or *interrelated wrongful acts* or facts or matters relating to or alleged in the original *claim*.

6.5 Defence costs, settlements and allocation

- 6.5.1 It will 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 will have no duty to defend any *claim* made against any *insured*.
- 6.5.2 With respect to any *claim* or *company crisis* as may potentially be covered by this policy, we will have the right to:
- (a) be provided with all such information as we shall reasonably require, at the *insured's* own cost;
 - (b) be kept fully informed as to all matters relating to or concerning the investigation, defence, settlement or appeal of any *claim* or the resolution of any *company crisis* and will have the right to receive copies of all relevant documentation relating thereto; and
 - (c) associate effectively with the *insured* in the defence, investigation and the negotiation of any settlement of any *claim*.

- 6.5.3 In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Senior Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued). The costs of such determination by Senior Counsel are to be paid by us and will not form part of the *limit of liability*.

If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.

- 6.5.4 The *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* or other expenses and no legal representative will be retained to defend any *insured*, without our prior written consent (except as provided under Extension 2.18 'Emergency expenses').

Only those settlements, consent judgments, *defence costs*, and other expenses that have been consented to by us in writing will be recoverable as *financial loss* 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.

- 6.5.5 We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed. In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

- 6.5.6 Our liability under this policy is limited to the proportion of *financial loss* which is a fair and equitable allocation:
- (a) between the *insured persons* and any other uninsured person or entity (including the *company*) where the *financial loss* has been jointly or jointly and severally incurred by them. Such allocation will be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured persons* and those other persons or entities; and/or
 - (b) between the *insured persons*, the *company* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory of the Commonwealth of Australia out of which the policy was issued).

The parties will be bound by Senior Counsel's determination as to the fair and equitable allocation. The costs of obtaining this determination will be paid by us and will not form part of the *limit of liability*.

While no fair and equitable allocation has been agreed or determined in respect of any *claim*, we will advance *defence costs* and other expenses in the proportion which we contend should be allocated to *financial loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses* and *company reputation protection expenses* incurred prior to the date of such negotiation or determination.

Any payments of *defence costs* (or other *financial loss*) to any *insured* that we have been made, 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 or such person or entity shall not be entitled under this policy to the payment of such *financial loss*.

6.6 Failure of the company to indemnify insured persons

If the *company* or an *outside entity* is not prohibited at law from indemnifying an *insured person*, but for whatever reason fails or refuses to do so, other than by reason of *financial impairment*, they will be presumed to have indemnified such *insured person* for *indemnified financial loss* up to the *deductible* applicable to Insuring Clauses 1.2, and 1.4. In this event, we will pay the *insured person financial loss* which should otherwise have been indemnified by the *company* and we will be entitled to recover that loss, up to the amount of the applicable *deductible*, from the *company*. Any decision by us to pay the *financial loss* of an *insured person* will be binding on the *company* and the *company* will not be entitled to withhold reimbursement of applicable *deductible* in the event of any disagreement between us and the *company* about the payment of the *financial loss* of an *insured person*.

In the event of the *company* being placed in liquidation (other than voluntary liquidation), no *deductible* amount will apply.

6.7 Goods and services tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

6.8 Law and jurisdiction

This policy is governed by the law of the State or Territory within the Commonwealth of Australia in which the policy is issued by us, as specified in the *schedule*, and the parties agree to submit to the exclusive jurisdiction of the courts in that State or Territory within the Commonwealth of Australia.

6.9 Limit of liability

Subject to the Insuring Clauses and extensions, the *limit of liability* will be our maximum liability (over and above any applicable *deductible*) in the aggregate, payable under this policy for all covered *financial loss* arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable) and either *company crisis* or *personal crisis* during the *period of insurance*. The *limit of liability* specified as Limit of liability for Insuring Clauses 1.1 to 1.4 in the *schedule* will apply to the applicable Insuring Clause if lower than the *limit of liability* specified as 'Aggregate for all *claims* during the *period of insurance*'.

For the avoidance of doubt:

- 6.9.1 the operation of any applicable *extended reporting period* shall not increase the *limit of liability*;
- 6.9.2 all *sub-limits of liability* are part of and not in addition to the *limit of liability*; and
- 6.9.3 the additional limit available under Extensions 2.1 'Additional Non-Executive Director protection' and 2.8 'Personal reputation crisis' are in addition to the *limit of liability*.

All *claims* arising out of the same *wrongful act* and all *interrelated wrongful acts* of an *insured* or related fact, circumstance, situation, event, cause or source will be deemed one *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*.

All *investigations* (whether linked to a *claim* or otherwise) which have a common or related fact, circumstance, situation, event, cause or source will be deemed a single *investigation* and such single *investigation* will be deemed to be first made on the date the earliest of such *investigations* is first made against an *insured person*, regardless of whether such date is before or during the *period of insurance*.

6.10 Non-disclosure and misrepresentation waiver

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

- 6.10.1 against an *insured person* who, before the *period of insurance*, knew the non-disclosure or misrepresentation was fraudulent, and any *company* to the extent that it may indemnify such *insured person*; and
- 6.10.2 against a *company* where any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or the holder of any equivalent position) of the *company* or the holder of any equivalent position in a jurisdiction, knew the non-disclosure or misrepresentation was fraudulent,

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

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

6.11 Notifications – Claims, crises, investigations

The *insured* will give written notice to us of any *claim* made against an *insured* during the *period of insurance* or *extended reporting period* (if applicable) or *company crisis* during the *period of insurance* as soon as is reasonably practicable after the *company's* risk manager, general counsel, company secretary, chief legal counsel or equivalent position first becomes aware of such *claim* or *company crisis* and in no event later than 90 (ninety) days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

Written notice will include but not be limited to a description of the:

- 6.11.1 *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *claim*;
- 6.11.2 *investigation*, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *investigation*; or
- 6.11.3 *company crisis* and the resultant actual or potential adverse publicity.

All notices under Condition 6.11 will be provided in writing to the Notification address specified in the *schedule*. Any notification, sent by post or email, will be effective from the date received by us.

6.12 Order of payments

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

- 6.12.1 first, pay *financial loss* of the *insured person* for which the *company* has not indemnified; then only after this payment;
- 6.12.2 with respect to whatever remaining amount of the *limit of liability* is available, pay such other *financial loss* for which coverage is provided under the remaining covers under this policy.

6.13 Order of recoveries

Any sums recovered following a payment or payments under this policy will be distributed in the following order:

- 6.13.1 the costs we have incurred in the course of such recovery;
- 6.13.2 to the *policyholder* in respect of any amount by which the amount of the *financial loss* exceeded the *limit of liability*;
- 6.13.3 to us to the extent of the *financial loss* paid or payable; and
- 6.13.4 to the *policyholder* for the amount of any *deductible* applicable.

6.14 Other insurance and indemnification

The *insured* must notify us of the existence of any other insurance policy or equivalent indemnity or cover available to the *insured* in respect of *financial loss* covered under this policy and provide details of it as soon as reasonably practical.

To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will always apply as excess over any other valid and collectable insurance or indemnification (other than from the *company*), available to the *insured*. When any other insurer has acknowledged a duty to defend any *claim* that would otherwise be subject to coverage under this policy, this policy will not respond or contribute to such *defence costs* to the extent of that other insurer's duty to defend.

6.15 Plurals and headings

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 6.15.1 headings are descriptive only, not an aid to interpretation;
- 6.15.2 singular includes the plural, and vice versa;
- 6.15.3 the male includes the female and neuter;
- 6.15.4 all references to specific legislation include amendments to and re-enactments of such legislation and similar legislation in any jurisdiction in respect of which a *claim* is made or an *investigation* is commenced; and
- 6.15.5 references to positions, offices or titles will include their equivalents in any jurisdiction in which a *claim* is made or an *investigation* is commenced.

6.16 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.

6.17 Severability and non-imputation

In granting cover under this policy we have relied upon the *submission* which forms the basis of this contract of insurance and will be considered as incorporated in and constituting part of this policy.

In respect of the declarations, statements and financial information of the *submission*:

- 6.17.1 no statement in the *submission* made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured* will be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;
- 6.17.2 the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* will be imputed to the *company* for the sole purpose of determining if cover is available under Insuring Clauses 1.2, and 1.4 of this policy with respect to *claims* against such *insured person*, but shall not be imputed to the *company* with respect to *claims* against other *insured persons* for the purpose of cover under Insuring Clauses 1.2, and 1.4 in relation to the *financial loss* of that other *insured person*; and

6.17.3 only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *company* will be imputed to the *company* for the purposes of indemnity under Insuring Clause 1.3 and Extension 2.21 'Indemnity costs for shareholder derivative claims' in relation to the *financial loss* of any *company*.

6.18 Subrogation

Upon any payment of or towards any *claim* we will be entitled to assume conduct of all rights of recovery available to any *insured* and all reasonable assistance will be rendered to us in the prosecution of such rights by such *insured persons* 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 5.4 'Prior and pending' had a valid notification to another policy existing or expired before or on the inception date of this policy been accepted. The *insured* will execute all papers reasonably required and shall take all reasonable action that may be necessary to secure any and all of our subrogation rights including, but not limited to, an action against the *company* for non-payment of indemnity to the *insured persons* by the *company*.

In no event, however, will we exercise our rights of subrogation against an *insured person* under this policy unless it is determined by a court judgment or final non-appealable adjudication in the underlying action or in a separate action or proceeding that such *insured person* had engaged in any conduct which is the subject of Exclusion 5.2 'Conduct'.

6.19 Valuation and foreign currency

All premiums, *limits of liability*, *sub-limits of liability*, *deductibles*, *retentions*, *financial loss* and other amounts under this policy are expressed and payable in Australian currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars in accordance with the Reserve Bank of Australia on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of *financial loss* is due, respectively.

7. Worldwide cover and global liberalisation

7.1 Worldwide cover

Cover under this policy will apply to *financial loss* incurred, *claims* made, *investigations*, *wrongful acts* and conduct committed and either *company crisis* or *personal reputation crisis* anywhere in the world, unless otherwise specified.

7.2 Global liberalisation

With respect to *financial loss* arising from a covered *claim* made against an *insured person* that is brought in a *foreign jurisdiction*, we will apply those terms and conditions of the *foreign policy* commonly offered to other *insureds* of a similar nature or size to the *policyholder* in such *foreign jurisdiction* in the ordinary course of business, that are more favourable to the *insured person* than the terms and conditions of this policy, if permitted by law.

Notwithstanding the foregoing, this global liberalisation clause will not apply to any provision of this policy or any other policy addressing: the definitions of *insured*, *insured person* and *financial loss*; the Insuring Clauses; the *limit of liability* (primary, excess; or *sub-limit of liability*); *deductibles*; cancellation or non-renewal procedures; *claim* made; other insurance; duty to defend; taxes; the premium; extended reporting or discovery periods, any endorsement added to this policy, and Condition 6.8 'Law and jurisdiction'. It is further agreed that any specific endorsement added to this policy will be applied to the terms, conditions, exclusions and limitations of the *foreign policy*. If there is a *sub-limit of liability* within the cover of the *foreign policy* such *sub-limit of liability* shall be no more than AUD \$1,000,000 for the purposes of this clause.

7.3 International program policies

7.3.1 Non-aggregation of limits of liability

- (a) It is hereby understood and agreed that corresponding to the liability of the *policyholder* and all *subsidiaries* to pay the aggregate premium for this policy and all *international program policies*, all contractual parties to those policies agree that for the purpose of the calculation of the *limit of liability* of this policy and the Limits of Liability of all *international program policies* (combined), all payments of *financial loss* under this policy and all *international program policies* (or any combination of those policies) are added up and are limited to the amount of the *limit of liability* of this policy (hereinafter called the Aggregate Limit of Liability).
- (b) The Aggregate Limit of Liability will be the maximum Limit of Liability and payment by Zurich, in the aggregate, for all amounts payable under this policy and all *international program policies* combined, except for any amount payable under Extension 2.1 'Additional Non-Executive Director protection' in this policy or under any equivalent clause in the *international program policies*.
- (c) The amount specified in the *schedule* as the maximum aggregate additional limit for *non-executive directors* (hereinafter called the Aggregate Additional Limit of Liability) will be the maximum amount and payment by Zurich, in the aggregate, for all amounts payable under Extension 2.1 of this policy and under all equivalent clauses providing for Additional limits for *non-executive directors* in all *international program policies*, combined.
- (d) It is further understood and agreed that nothing in the Non-aggregation of limits of liability clause shall be construed to increase:
 - (i) the Limit of Liability set forth in the schedule of the *international program policies*, which will remain the maximum liability under such policies, (save for the operation of any provision equivalent to Extension 2.1 of this policy);
 - (ii) our *limit of liability* under this policy, which will remain our maximum liability under this policy, (save for the operation of Extension 2.1 of this policy); or
 - (iii) the maximum aggregate additional limit for *non-executive directors* under Extension 2.1 of this policy or any equivalent provision in the *international program policies*, which will remain our maximum liability under those provisions.

7.3.2 Hold Harmless Agreement – special conditions regarding aggregation

In the event that:

- (a) the Aggregate Limit of Liability (defined in the Non-aggregation of limits of liability clause above) is exceeded by any and/or all payments under this policy and/or any or all *international program policies* (other than by the operation of Extension 2.1 of this policy or any equivalent provision in the *international program policies*); or
- (b) the Aggregate Additional Limit of Liability (defined in the above Non-aggregation of limits of liability clause) is exceeded by any and/or all payments under Extension 2.1 of this policy or any equivalent provision in the *international program policies*,

the *policyholder* will reimburse Zurich and/or any partners of Zurich that issued any *international program policy* in respect of any amount paid by or which has been agreed to be paid by any of the insurers of the *international program policies* in excess of the Aggregate Limit of Liability or the Aggregate Additional Limit of Liability, as the case may be.

Any amount payable under the terms of this clause will be paid by the *policyholder* within thirty (30) days of notice from the other party.

7.3.3 Notice and authority for international programs

It is agreed that the *policyholder* will act on behalf of its *subsidiaries* and each and every *insured* with respect to the issuance and development of all *international program policies*, including all terms, conditions, exclusions and limitations of such *international program policies*, including, but not limited to 7.3.1 above. It is further understood and agreed that the *policyholder* will inform its *subsidiary* of any *international program policy* to be issued for such *subsidiary*.

7.3.4 Cancellation and non-renewal of international program policies

If this policy is cancelled, rescinded or non-renewed then all other *international program policies* will be deemed cancelled, rescinded or non-renewed with effect from the same date as this policy.

7.3.5 Master program

This policy acts as a master directors and officers liability program to operate where *international program policies* have been issued at Zurich's request for the Limits of Liability and in the countries specified in the *schedule* and which are reinsured by Zurich.

References to '*financial loss*' in Clauses 7.3.1 and 7.3.2 above, also refer to the equivalent term under each *international program policy*.

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