

Zurich Management 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 policy is a 'Claims Made' liability insurance policy, apart from Section 5. It only provides cover if:

- A *claim* is made against an *insured*, by some other person, during the period when the policy is in force; and
- The *claim* arises out of circumstances committed, attempted or alleged to have been committed or attempted after the *date of continuous cover* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an *insured* becomes aware, during the *period of insurance*, of any fact or circumstance which might give rise to a *claim* against them by some other person, then provided that the *insured* notifies Zurich of the matter before this policy expires, Zurich may not refuse to indemnify merely because a *claim* resulting from the matter is not made against the *insured* while the policy is in force.

If an *insured*, inadvertently or otherwise, does not notify the relevant facts or circumstances to Zurich before the expiry of the policy, the *insured* will not have the benefit of section 40(3) and Zurich may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the circumstances 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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Zurich Management Liability Insurance

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZFSA provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporates and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

ZFSA is part of the worldwide Zurich Financial Services Group, an insurance-based financial services provider with a global network of subsidiaries and offices in North America and Europe as well as in Asia Pacific, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

How to apply for this insurance

Throughout this document when we are referring to your insurance broker or adviser, we simply refer to them as your intermediary.

If you are interested in buying this product or have any inquiries about it, you should contact your intermediary who should be able to provide you with all the information and assistance you require.

If you are not satisfied with the information provided by your intermediary you can contact us at the address or telephone number shown on the back cover of this document. However, we are only able to provide factual information or general advice about the product. We do not give advice on whether the product is appropriate for your personal objectives, needs or financial situation.

Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty under the Insurance Contracts Act 1984 (Cth) to disclose to us every matter you know, or could reasonably be expected to know, is relevant to our decision whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

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

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

Our contract with you

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

Your 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 you provide to us when applying for insurance cover;
- your 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 your 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.

Privacy

Zurich is bound by the National Privacy Principles and the Privacy Act 1988 (Cth).

We may need to collect personal information ('Information') from you for the primary purpose of providing you with insurance products, services, processing and assessing claim(s).

If you do not wish to provide us with the Information, we may not be able to process your application or assess your claim(s).

By providing us with your Information, you consent to us disclosing your Information to other insurers, our service providers, our business partners or as required by law.

For further information about Zurich's Privacy Policy, a list of service providers and business partners that we may disclose your Information to, or details of how you can access the Information we hold about you, please refer to the Privacy link on our homepage – www.zurich.com.au, contact us by telephone on 132 687 or email us at Privacy.Officer@zurich.com.au.

Introduction

The policy cover is made up by various Sections of cover which can be customised to meet your business requirements. The Sections are:

- Section 1 – Insured Persons Liability
- Section 2 – Company Liability
- Section 3 – Employment Practices Liability
- Section 4 – Statutory Liability
- Section 5 – Commercial Crime
- Section 6 – Internet Liability

These *cover sections* only form part of your policy when the relevant *cover section* has been specified in the *schedule*.

Within the overall policy, we have included General Definitions, General Extensions of Cover, General Exclusions and General Conditions which are applicable to all *cover sections*. Within each *cover section*, we have included additional Definitions, Extensions of Cover, Exclusions and Special Conditions that are applicable only for that individual *cover section*.

Our Agreement

Subject to payment of the premium set out in the *schedule*, we agree to provide the cover shown within the *schedule* for the *cover sections* taken on the terms set out in this policy, including any automatic and operative Extensions of Cover and attaching endorsements.

General Definitions

For the purposes of this policy:

Bodily injury

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

Change in control

change in control means an event or events occur, with the result that:

- (a) any person, entity or group:
 - (i) acquires more than 50% of the *policyholder's* share capital;
 - (ii) acquires the majority of the voting rights in the *policyholder*;
 - (iii) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
 - (iv) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
 - (v) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or
- (b) a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, administrator or deed administrator (or similar official or person) is appointed for the *policyholder*.

Claim

claim means:

- (a) a written demand for monetary damages or non-monetary relief;
- (b) a civil proceeding, suit or counter-claim commenced by the service of a statement of claim, summons or similar pleading;
- (c) a criminal proceeding;
- (d) an arbitration, mediation proceeding or alternative dispute resolution proceeding;
- (e) any request to waiver or extend the operation of or waive any statute of limitations or contractual time-bar,

which alleges a *wrongful act* or *wrongful breach* occurring before or during the *period of insurance* or the *extended reporting period* (if applicable), subject to the terms and conditions of the policy.

The term '*claim*' shall include a *securities claim*, *extradition claim*, *environmental mismanagement claim*, *employment practices claim* or an *electronic publishing claim*, where the relevant *cover section* has been specified in the *schedule*.

Clean up costs

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

Company

company means:

- (a) the *policyholder*;
- (b) any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy);
- (c) any foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*, provided that this definition shall not include any pension or superannuation fund, trust or scheme; or
- (d) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status in any applicable jurisdiction), if any.

Cover section

cover section means the individual coverage Section that attaches to and forms part of the policy when shown in the *schedule*.

Date of continuous cover

date of continuous cover means:

- (a) for *insured persons* the date as specified in the *schedule*; and
- (b) for the *company* under Sections 2., 3., 4. and 6. the date specified in the *schedule*.

Deductible

deductible means the amount stated in the *schedule* that shall be the responsibility of the *company*.

Defence costs

defence costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*), in the investigation, defence, settlement or appeal from any *claim* made or brought against an *insured*.

Defence costs shall also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by us on behalf of the *insureds* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Defence costs shall not include *investigation costs* or *representation costs*.

Director or officer

director or officer means:

- (a) any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in any other country;
- (b) any natural person who is a past, present or future *shadow director* of the *company*;
- (c) 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*;
- (d) any *director or officer* defined in (a) to (c) above, who is or was or shall be a member of the *company's* internal audit committee, or any other internal committee of the company; and
- (e) any *employee* of the *company* who is a past, present or future corporate general counsel (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*.

Employee

employee means a natural person, including a past, present or future employee, while in the regular service or seasonal or casual or temporary service or under a contract of service or apprenticeship 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.

Employment practices claim

employment practices claim means:

- (a) 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*; and/or
- (b) a proceeding, investigation or charge brought by or before the Australian Human Rights Commission or any Australian State or Territory based equivalent (or similar body in any foreign jurisdiction).

Environmental event

environmental event means:

- (a) 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
- (b) 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*.

Environmental mismanagement claim

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

- (a) is a *claim* or *securities claim* against the *company*;
- (b) is an *employment practices claim* against an *insured person* or the *company*, including without limitation any such *claim* for retaliatory treatment;
- (c) is against an *insured person* for *wrongful acts* from 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; or
- (d) results in *financial loss* incurred by *insured persons* for which the *company* does not indemnify the *insured persons* either because the *company* is neither permitted nor required to grant such indemnification or because of *financial impairment*.

Extended reporting period

extended reporting period means the relevant period of cover arising or offered under General Extension of Cover 6. 'Extended reporting period', General Extension of Cover 10. 'Retired directors and officers' and/or General Extension of Cover 12. 'Runoff cover for past subsidiaries'.

Financial impairment

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

- (a) the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator or similar official to take control of, supervise, manage or liquidate the *company*;
- (b) the appointment by or on behalf of the *company* of administrators; or
- (c) the *company* being in receivership or liquidation.

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.

Financial loss

financial loss means:

- (a) damages, judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) that any *insured* becomes legally liable to pay;
- (b) sums payable for any settlement to which we have consented;
- (c) *defence costs*;
- (d) *investigation costs*;
- (e) *representation costs*;
- (f) *extradition costs*;
- (g) *prosecution costs*;
- (h) *public relation expenses*;
- (i) *civil or bail bond expenses*;
- (j) *deprivation of assets expenses*;

- (k) fines and pecuniary penalties which an *insured* is legally obligated to pay, provided we are not legally prohibited from paying such fine or penalty and excepting fines and pecuniary penalties referred to in paragraph (iii) below of this definition of *financial loss*; and
- (l) punitive, exemplary, aggravated and multiple damages unless uninsurable by law.

Financial loss (other than *defence costs*) does not include:

- (i) taxes (other than those covered by Section 1 – Extension of Cover 12. ‘Tax liability’ and General Condition 11. ‘Goods and Services Tax’);
- (ii) social security contributions;
- (iii) fines and pecuniary penalties 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;
- (iv) damages that are uninsurable by law;
- (v) *clean up costs*; or
- (vi) 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.

The question of whether any *financial loss* is uninsurable by law pursuant to clauses (k), (l), (iii) and (iv) above shall be governed by such applicable law that most favours coverage for such *financial loss*, provided that such applicable law has a substantial connection or relationship to the relevant *insured* or to the *claim* giving rise to such liability.

Greenhouse gases

greenhouse gases means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆), or any other emission or substance defined by applicable law as a Greenhouse gas.

Insured

insured means:

- (a) any *insured person(s)*; and
- (b) the *company*.

Insured person(s)

insured person(s) means:

- (a) *director or officer*;
- (b) *outside entity executive*;
- (c) *employee* of the *company* who is the risk manager (or equivalent position) of the *policyholder*;
- (d) *employee* of the *company* while acting in a managerial or supervisory capacity within the *company*;
- (e) *employee* of the *company*, other than a *director or officer*, in relation to any *claim*, but only if and as long as such *claim* is also made and continuously maintained against a *director or officer*.
- (f) for the purpose of General Extension of Cover 8. ‘Marital estates’ only and no other, any lawful spouse or domestic partner of a person as defined in (a) to (e) immediately above; and
- (g) for the purpose of General Extension of Cover 5. ‘Estates, heirs, legal representatives’ only and no other, any estate, heir or legal representative of a person as defined in (a) to (e) above.

Insured person(s) shall not include any agent, contractor, consultant, external auditor, or liquidator, deed administrator, administrator or receiver (or the equivalent in any other jurisdiction) of the *company*.

Investigation

investigation means a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by an *official body*.

Limit of Liability

limit of liability means the amount specified in the *schedule* for each *cover section* and in the aggregate for all *cover sections* which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms and conditions of this policy.

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.

Official body

official body means any regulator, government, disciplinary body or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate 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.

Outside entity

outside entity means:

- (a) any *non-profit organisation*; or
- (b) any for-profit entity;

but excluding any *company* and 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 that had negative net assets or negative net worth at the inception date of this policy;

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

Outside entity executive

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

- (a) did or will serve or act; or
- (b) during the *period of insurance* is serving or acting, in his or her capacity as a director or officer (or equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request.

Period of insurance

period of insurance means the period of time specified in the *schedule* to this policy including any Extension of Cover or General Extension of Cover thereto agreed in writing by us.

Policyholder

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

Pollutants

pollutants means 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.

Prior known fact

prior known fact means any fact or matter which:

- (a) an *insured person* first became aware of, after the *date of continuous cover*, but prior to the commencement of the *period of insurance*; and
- (b) knew, or a reasonable *insured* would have considered, at any time after the *date of continuous cover* but prior to the commencement of the *period of insurance*, might result in an allegation against the *insured* of a *wrongful act*.

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.

Public relations expenses

public relations expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an *insured person* or the *company* in the reasonable exercise of their discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of a *claim* or *investigation*.

Schedule

schedule means the Schedule attached to this policy or any schedule subsequently substituted during the *period of insurance* and duly signed, stamped and dated by an authorised officer of Zurich.

Securities

securities means any bond, debenture, note, share, stock, ADR 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.

Securities claim

securities claim means a *claim* that:

- (a) is brought by a past or present holder of *securities* of the *company*:
 - (i) in his, her or its capacity as a *security* holder of such *company*, with respect to his, her or its interest in *securities* issued by the *company*; or
 - (ii) on behalf of or in the name of the *company* (in the form of a shareholder 'derivative action' or its equivalent) against an *insured*; or
- (b) is brought by any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities* and alleges that the *company* and/or any of its *insured persons* violated a government, federal, state, provincial, local or foreign securities law or a rule or regulation promulgated under such securities law, including but not limited to the Corporations Act 2001 (Cth), Securities Act 1978 (NZ), Securities Markets Act 1998 (NZ), Financial Services and Markets Act 2000 (UK), United States Securities Act of 1933 (as amended) and the United States Securities Exchange Act of 1934 (as amended), but only in connection with the purchase, sale or offer to purchase or sell *securities* issued by the *company*.

Sub-limit

sub-limit means a limit of our liability under this policy, which is within, and forms part of, and is not in addition to, the *limit of liability*.

Submission

submission means:

- (a) any information and/or statements or materials;
- (b) any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- (c) 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.

Subsidiary

subsidiary means any entity in which the *policyholder*:

- (a) holds directly or indirectly more than 50% of the voting rights;
- (b) appoints a majority of the board of directors (or equivalent in any other country); or

- (c) has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

and shall in any event include 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.

Third party

third party means any natural person or entity other than an *insured* or an *employee*.

US claim

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

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of,

the United States of America or Canada or its territories and/or possessions.

US securities claim

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

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of,

the United States of America or Canada or its territories and/or possessions.

Wrongful act

wrongful act means any actual, alleged or attempted act or omission, 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:

- (a) 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;
- (b) any *insured person* whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request; or
- (c) the *company*, other than such conduct in connection with the professional services provided by the *insured*.

General Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below to all cover sections. Each Extension of Cover is subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise.

1. Advancement of defence costs and other financial loss (including emergencies)

We agree, in respect of a *claim* or *investigation* and prior to final adjudication of the *claim* or finalisation of the *investigation*, to advance the following payments as they are incurred by an *insured*:

- (a) *defence costs*;
- (b) *investigation costs*;
- (c) *representation costs*;
- (d) *prosecution costs*;
- (e) *civil or bail bond expenses*;
- (f) *public relations expenses*; and
- (g) *extradition costs*.

We will not rely on General Exclusion 3. 'Conduct' or Exclusion 4. 'Wilful and intentional breaches' under Section 4, to deny indemnity or to refuse to advance *defence costs* under this extension of cover until the conduct in question has been finally established, by court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency our written consent cannot be reasonably obtained by the applicable *insured* before any of the above heads of *financial loss* are incurred, the *insureds* shall have the right to incur such amounts without that consent for a period of 30 days immediately following the date on which the relevant head or heads of *financial loss* was or were first incurred.

In the event of an emergency referred to above, the *sub-limit* is 10% of the *limit of liability* for all *claims* by all *insureds* in the aggregate.

Any advance payments to an *insured* that have been made by us shall be repaid by that *insured* in the event that the *insured* shall not be entitled under this policy to the payment of such *financial loss*.

2. Continuous cover

Notwithstanding General Exclusion 8. (c), 'Prior notice' we will pay *financial loss* or *loss* arising from any *claim* first made against an *insured* or *investigation* into the affairs of the *insured* during the *period of insurance* arising from a *prior known fact*.

Provided that:

- (a) the *insured* has maintained without interruption, the relevant sections taken within Management Liability, Directors and Officers Liability, Employment Practices Liability, Statutory Liability, Commercial Crime or Internet Liability Insurance with an insurer from the *date of continuous cover* to the present date;
- (b) neither the *claim* nor the *prior known fact* has earlier been notified to us or at any time to any insurer under any policy; and
- (c) cover under this extension of cover will be pursuant to the terms, conditions, exclusions and limitations 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 broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

3. Crisis containment

We agree to pay *public relations expenses* to or on behalf of the *company* or an *insured person* for the sole purpose of protecting the reputation of same, which has been brought to question as a direct result of:

- (a) any *claim* against the *company* first made during the *period of insurance* or the *extended reporting period* (if applicable);
- (b) any *investigation* for which the *company* is entitled to cover for *representation costs*;
- (c) any *claim* against an *insured person* first made during the *period of insurance* or the *extended reporting period* (if applicable);
- (d) any *investigation* for which the *insured person* is entitled to cover for *investigation costs*.

However:

- (i) the *company* must notify us within 30 days of first becoming aware the reputation of the parties noted in (a) to (d) are being brought into question and provide full written details outlining the circumstances surrounding the event; and
- (ii) we must have given prior written consent to retain the services of such public relations firm or consultant or crisis management firm; and
- (iii) the *sub-limit* for this extension of cover is \$100,000 or the amount specified in the *schedule* for all *public relations expenses* payable and in the aggregate for any one *period of insurance*.

4. Environmental mismanagement coverage

This policy extends to provide cover in respect of any *claim* made:

- (a) against any *insured person*; and
- (b) against the *company*,

for any *environmental mismanagement claim* or *wrongful breach claim*.

The *sub-limit* for this extension in respect to 4 (b) above, is \$500,000 in the aggregate any one *period of insurance* or the amount specified in the *schedule*.

5. Estates, heirs, legal representatives

This policy extends to cover *financial loss* or *loss* arising from any *claim* made against the estates, heirs or legal representatives of any *insured person* 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 limitations of this policy in so far as they can apply.

This extension of cover does not cover any *claim* arising out of any act or omission of the estates, heirs or legal representatives.

6. Extended reporting period

(a) In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* automatically has the right, without payment of any additional premium, to a single coverage extension under this policy for a period of 90 days after the expiry of the *period of insurance*, in relation to:

- (i) any *claim* made against any *insured* during such 90 day period;
- (ii) any *investigation costs* where the legal requirement on the *insured person* to attend first arises during such 90 day period; and
- (iii) any *representation costs* where the legal requirement on the *company* to attend first arises during such 90 day period,

but only with respect to any *wrongful act*, *wrongful breach*, *electronic publishing claim* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

(b) In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* shall have the right to a single coverage extension under this policy for a period of:

- (i) 12 months;
- (ii) 24 months;
- (iii) 72 months; or
- (iv) 84 months,

after the expiry date of the *period of insurance* for:

1. any *claim* made against any *insured* during the selected *extended reporting period*; or
2. any *investigation costs* where the legal requirement on the *insured person* to attend first arises during such selected *extended reporting period*; or
3. any *representation costs* where the legal requirement on the *company* to attend first arises during such selected *extended reporting period*,

but only with respect to any *wrongful act*, *wrongful breach*, *electronic publishing claim* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

General Extension of Cover 6. 'Extended reporting period' (b) is subject to such terms and conditions as we may reasonably impose. Further and subject to General Extension of Cover 6. 'Extended reporting period' (c) below, cover is only available under this extension of cover if the applicable additional premium has been paid by the *policyholder*, as required by us.

If the *policyholder* selects an *extended reporting period* as described above, the *policyholder* and the *insured* shall not have a right to cover under General Extension of Cover 6. 'Extended reporting period' (a) above.

(c) The rights contained in General Extension of Cover 6. 'Extended reporting period' (b) shall terminate:

- (i) unless written notice is given to us by the *policyholder* no later than 30 days after the effective date of the non-renewal of this policy or (if applicable) *change in control* (whichever is the earlier), of its intention to elect an *extended reporting period* described above; and

- (ii) unless as a condition precedent to the extended cover under General Extension of Cover 6. 'Extended reporting period' (b) above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the *extended reporting period* shall be deemed fully earned at its commencement and non-refundable; and
- (iii) immediately upon the effective date of any Management Liability, Directors and Officers Liability, Employment Practices Liability, Statutory Liability or Internet Liability contract of insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under General Extension of Cover 6. 'Extended reporting period' (a).
- (d) The *insured* agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability* or other terms, conditions or exclusions) this does not constitute a refusal by us to renew.
- (e) Nothing in this extension of cover increases the *limit of liability*.

7. Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Management Liability Insurance policy and such endorsement is to be made available to our clients for no additional premium, then the *policyholder* shall have the right to the benefit of, but not the obligation to accept, such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.

This extension of cover shall not apply to any *policyholder*:

- (a) who is under *financial impairment*;
- (b) whose policy is operating within an *extended reporting period* as per General Extension of Cover 6. 'Extended reporting period'; or
- (c) whose policy is operating within an *extended discovery period* as per Extension of Cover 8. 'Extended discovery period' under Section 5; or
- (d) which has advised us of a *change in control* as per General Condition 5. 'Change in control and public offering'.

8. Marital estates

This policy will cover such *financial loss* or *loss* as arises from any *claim* made against the lawful spouse or domestic partner of any *insured person* arising solely out of a *wrongful act* by such *insured person* that is covered under this policy and made solely against such persons or the estate in his or her respective capacity as the spouse or domestic partner of any such *insured person*.

The cover provided by this extension of cover is limited to *financial loss* or *loss* arising from actions or proceedings for the enforcement of judgments or damages against an *insured person* which relate to the ownership of property (including marital community property) jointly held by the *insured person* and his or her spouse or domestic partner. All cover provided by this extension is subject to such lawful spouse or domestic partner, or the estate in his or her respective capacity as the spouse or domestic partner, observing and being subject to the terms, conditions and limitations of this policy in so far as they can apply.

This extension of cover does not cover any *claim* arising out of any act or omission of the spouse or domestic partner.

9. Non-Disclosure and Misrepresentation waiver

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

- (a) against an *insured person* who, before inception of this policy, knew the facts or matters not disclosed or misrepresented, and any *company* to the extent that it may indemnify such *insured person*;
- (b) 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 equivalent position) of the *company* or the holder of any equivalent position in a jurisdiction, knew the facts or matters not disclosed or misrepresented,

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

For clarity, this extension of cover does not apply to any right we may have to cancel the policy. We are entitled to cancel the policy for non-payment of premium.

Nothing in this paragraph derogates from General Condition 18. 'Severability and Non-Imputation'.

10. Retired directors and officers

On the basis that:

- (a) this policy is neither renewed nor replaced with a Management Liability, Directors and Officers Liability, Employment Practices Liability, Statutory Liability or Internet Liability Insurance or similar contract of insurance; or
- (b) no *extended reporting period* arises or is effected under General Extension of Cover 6. 'Extended reporting period',

then those *directors* and *officers* who retired from the *company* during the *period of insurance* shall automatically be entitled to a single *extended reporting period* under this policy of 84 months (being the maximum period for all *directors* and *officers* in the aggregate) at no additional premium, however, always subject to the terms, conditions and limitations of this policy.

11. Runoff cover for outside entity executives

In the event that an *insured person* ceases to act as an *outside entity executive* of an *outside entity* (as defined within this policy) at any time prior to or during the *period of insurance*, then this policy shall continue to apply with respect to any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable), but only with respect to *wrongful acts* committed prior to the date such person ceased to be an *outside entity executive* of such *outside entity* and committed during the time such person was an *outside entity executive* of such *outside entity* and otherwise covered under the terms, conditions, exclusions and limitations of this policy.

12. Runoff cover for past subsidiaries

In the event that a *subsidiary* ceases to be a *subsidiary* (as defined within this policy) at any time prior to or during the *period of insurance*, then 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 with respect to *wrongful acts* committed prior to the date such entity ceased to be a *subsidiary* and committed during the time such entity was a *subsidiary*, and otherwise covered under the terms, conditions, exclusions and limitations of this policy.

General Exclusions

We shall not be liable under this policy to make any payment for *financial loss* or *loss* (including *defence costs*) in connection with any *claim* made against any *insured*, or *investigation costs* or *representation costs* in respect of any *investigation*:

1. Anti-competitive practices

based upon, arising out of or in connection with any *claim* made for any actual or alleged violation of any law, regulation or by-law anywhere in the world which regulates or restricts anti-trust or monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices or tortious interference in another's business or contractual relationships.

However, this exclusion shall not apply to any coverage provided under Section 1.

2. Bodily injury / Property damage

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

- (a) mental anguish or emotional distress in connection with any *employment practices claim*;
- (b) *defence costs* and *investigation costs* specified under Section 1, Extension of Cover 8. 'Occupational health and safety';
- (c) *representation costs* specified under Section 2 Extension of Cover 3. (b) 'Representation costs'; or
- (d) *wrongful breach claims* covered under Section 4.

3. Conduct

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

- (a) any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- (b) any criminal, fraudulent, dishonest or malicious act or omission committed by any *insured*;

provided that this exclusion shall not apply to *defence costs* incurred by an *insured person* or by the *company* in connection with a *corporate manslaughter proceeding* or occupational health and safety proceeding.

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 adjudication (including all available appeals).

For the purpose of determining the applicability of this exclusion:

- (i) no conduct or knowledge of an *insured person* shall be imputed to any other *insured person*; and
- (ii) to indemnity under Section 2, 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 equivalent) of the *company* shall be imputed to the *company*.

4. Environmental event

based upon, arising out of or attributable to an *environmental event*; except as provided under General Extension of Cover 4. 'Environmental mismanagement coverage'.

5. Insured vs Insured for US claims

when such *claim* is a *US claim* and is brought by, on behalf of, or at the instigation of an *insured* or any *director or officer*, any *outside entity* or any *director or officer* (or equivalent in any other country) of an *outside entity*, provided this exclusion shall not apply to:

- (a) a *claim* brought or maintained by a liquidator, receiver administrator, deed administrator, 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 of the company* or any *director or officer* (or equivalent in any other country) of the *outside entity*;

- (b) a *claim* or *securities claim* in the form of a derivative action brought in the name of the *company* or an *outside entity* by one or more persons who are not *directors or officers* and who bring and maintain the *claim* or *securities claim* without the solicitation, voluntary assistance or active participation of any *director or officer* of the *company* or any *director or officer* (or equivalent in any other country) of the *outside entity*;
- (c) an *employment practices claim* brought by an *insured person* or any *director or officer* (or equivalent in any other country) of an *outside entity*;
- (d) a *claim* brought by or at the instigation of any *insured person* or any *director or officer* (or equivalent in any other country) of an *outside entity* if such *claim* results from a covered *claim* brought by any *third party* against such claiming *insured person* and the *third party* could have brought the *claim* directly against an *insured person* or any *director or officer* (or equivalent in any other country) of the *outside entity* not named in the independent *claim* (including any cross claim / *third party claim* for indemnity);
- (e) a *claim* brought by any former *insured person* of the *company* or any *director or officer* (or equivalent in any other country) of an *outside entity*;
- (f) a *claim* brought by an *insured person* or any *director or officer* (or equivalent in any other country) of an *outside entity* in their capacity as a 'whistleblower' (as that term is defined by governmental, federal, state, local or foreign law) alleging a *wrongful act* by an *insured person* in connection with a protected activity categorised by any governmental, federal, state, local or foreign law as a 'whistleblower' activity; or
- (g) *defence costs* incurred by an *insured person*.

6. Outside entity executive – Prior and pending

in respect of any *outside entity executive* if such *claim* is based upon, arises from or is a consequence of any:

- (a) litigation, suit, *claim*, arbitration or mediation initiated prior to or pending on the date such *outside entity executive* first became insured under this policy in such capacity; or litigation, suit, arbitration or mediation which alleges or is derived from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation; or

- (b) circumstances known by such *outside entity executive* or the *company* prior to the date such *outside entity executive* first became insured under this policy in such capacity, which could reasonably have given rise to a *claim* under this policy.

7. Prior and pending

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

- (a) an *investigation* or other proceedings ordered or commissioned at the behest of a legally empowered body, initiated prior to the *date of continuous cover* specified in the *schedule*; or
- (b) any litigation, suit, *claim*, arbitration or mediation initiated prior to or pending on the *date of continuous cover* specified in the *schedule*; or litigation, suit, arbitration or mediation alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation.

8. Prior notice

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

- (a) litigation, *claim*, *investigation* or circumstance existing prior to the *period of insurance* that has been reported under any Management Liability, Directors and Officers Liability, Employment Practices Liability, Statutory Liability, Commercial Crime or Internet Liability Insurance of which this policy is a renewal or replacement or which it may succeed in time;
- (b) fact, circumstance, act or omission or *claim* disclosed in the *submission* or for which notice has been given to any other insurer before the commencement of the *period of insurance*; or
- (c) *prior known fact* that ought to have, but has not, been reported under any Management Liability, Directors and Officers Liability, Employment Practices Liability, Statutory Liability, Commercial Crime or Internet Liability Insurance of which this policy is a renewal or replacement or which it may succeed in time.

9. Professional services

alleging, arising from, based upon, attributable to or in connection with any *claim* made for any actual or alleged act or omission, including but not limited to any error, misstatement, misleading statement, neglect or breach of duty committed, attempted or allegedly committed or attempted in the rendering of or actual or alleged failure to render any professional service or advice to a *third party*, customer or *client* of the *insured*.

10. Subsidiary

alleging or arising from the *wrongful act*, *wrongful breach* or *electronic publishing claim* of:

- (a) any *insured person* of any *subsidiary*; or
- (b) the *subsidiary*,

committed prior to such entity becoming a *subsidiary* or after such entity ceases to be a *subsidiary*.

This exclusion is subject to any cover granted by us under General Extension of Cover 12. 'Runoff cover for past subsidiaries' and General Condition 8. 'Creation and acquisition of subsidiaries'.

11. US securities claims

arising from, based upon, attributable to or as a consequence of an *US securities claim*.

General Conditions

1. Allocation

Our liability under this policy is limited to the proportion of *financial loss* or *loss* which is a fair and equitable allocation:

- (a) between the *insured* and any other uninsured person or entity (including the *company*) where the *financial loss* or *loss* has been or will be jointly or jointly and severally incurred by them. Such allocation shall be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured* 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 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, we will advance *defence costs, investigation costs or representation costs* in the proportion which we contend should be allocated to *financial loss or loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs, investigation costs and representation costs* incurred prior to the date of such negotiation or determination.

2. Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in the Commonwealth of Australia and the relevant State in which this policy is issued by us.

3. Assignment

This policy and any rights thereunder shall not be assigned without our written consent.

4. Cancellation

Without derogating from our rights in General Extension of Cover 9. 'Non-Disclosure and Misrepresentation waiver', this policy may not be cancelled by us, except for non-payment of premium. If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

5. Change in control and public offering

(a) If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy shall only apply in respect of *wrongful acts* or other conduct occurring prior to the effective date of such *change in control*. The *policyholder* shall give us written notice of such *change in control* as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a *change in control*, if the *policyholder* cancels this policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

(b) If during the *period of insurance* the *policyholder* or any *subsidiary* plans or makes, a public offering of its *securities*, it shall inform us as soon as practicable. We shall not be liable to make any payment of *financial loss* arising from any *securities claim* associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the *policyholder* agrees with us on any amendments to this policy and makes payment of any additional premium required, within 60 days following the public announcement of such offering, after which cover shall apply retroactively for the full *period of insurance*.

The payment of any additional premium (including insurance premium tax) shall be a condition precedent to our liability under this paragraph.

6. Co-ordination of coverage

Any *claim* or *investigation costs* or *representation costs* covered under this policy which is covered under various *cover sections*, shall be first covered under Section 1., before any other *cover sections* applying, subject to its terms, conditions and limitations.

Provided that this clause will not apply to an *employment practices claim* which shall be first covered under Section 3., subject to its terms, conditions and limitations.

7. Confidentiality

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

- (a) 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; or
- (b) we consent in writing to disclosure of the existence and/or terms of this policy.

8. Creation and acquisition of subsidiaries

- (a) Subject to 'Creation and acquisition of subsidiaries' (b) below, any entity, whether created or acquired, that becomes a *subsidiary* during the *period of insurance* of this policy and any *directors* or *officers* (or equivalent executive or management position) thereof, shall be *insureds* under this policy with respect to:
- (i) *claims* for *wrongful acts*, *wrongful breaches* or *electronic publishing claims*; and
 - (ii) *investigations* in relation to conduct; and
 - (iii) coverage provided to the *company* under Insuring Clauses 2., 3., 4., 5. and 6.,
- occurring after the date such entity became a *subsidiary* and while such entity remains a *subsidiary*.
- (b) There is no cover under this policy for any newly acquired *subsidiary* (or any *insured person* thereof) described in 'Creation and acquisition of subsidiaries' (a) above:
- (i) whose total consolidated assets are greater than 25% of the total consolidated assets of the *policyholder* (determined as of the date of the acquisition); or
 - (ii) whose *securities* are publicly traded in the United States; or
 - (iii) that is a *financial institution*.
- (c) We may, at our sole discretion, also agree, in writing, after the presentation of all appropriate information to provide cover for such new *subsidiary* noted in (a) above for *wrongful acts*, *wrongful breaches* or *electronic publishing claims* and other conduct occurring prior to the date of acquisition.

With regard to such cover for prior *wrongful acts*, *wrongful breaches* or *electronic publishing claims* and other conduct we reserve the right to vary the terms of this policy and the prior acceptance of and subsequent compliance with each and every varied term by the *insureds*, shall be a condition precedent to indemnity under this paragraph.

9. Deductible

- (a) Separate applicable *deductibles* are set out in the *schedule* for *financial loss* or *loss* that arises out of each *cover section*.

We shall be liable only for the amount of *financial loss* or *loss* that exceeds the applicable *deductible* as specified in the *schedule*. The *deductible* is not part of our liability for *financial loss* or *loss*. The *deductible* is to be borne by the *company* and shall remain uninsured.

Irrespective of the number of *insureds* claimed against, a single *deductible*, being the highest, shall apply to all *financial loss* or *loss* in respect of any one *claim*, or two or more *claims* arising from one *wrongful act* or from a series of *wrongful acts* which are in any way connected causally with another.

- (b) 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:
- (i) the *claim* is dismissed and without any payment by or on behalf of the *insured*;
 - (ii) 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
 - (iii) 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, 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 or related *wrongful acts* or any matters relating to the facts and matters alleged in the relevant *claim*.

- (c) If upon notification we determine a *claim* can be settled without the need to incur *defence costs* we may, at our absolute discretion, recommend a settlement of the matter. If the *insured* consents to the settlement and the matter is then settled in accordance with our recommendation we will reduce or refund 50% of the *deductible*. This will not apply to *cover section* 5.

10. Defence costs and Settlements

- (a) It shall be the duty of Zurich and not the *insured* to take all reasonable steps to defend such *claim* and the *insured* is required not to do anything to prejudice their and/or our position.
- (b) With respect to any *claim* or *investigation* as may potentially be covered by this policy, we shall:
 - (i) have the right to be provided with all such information as we shall reasonably require, at the *insured's* own cost;
 - (ii) be kept fully informed as to all matters relating to or concerning the *investigation*, defence, settlement or appeal and shall have the right to receive copies of all relevant documentation relating thereto; and
 - (iii) have the right to associate effectively with the *insureds* in the defence, investigation and the negotiation of any settlement of any *claim* or *investigation*.
- (c) The *insured* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* or *investigation costs*, and no legal representative shall be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.

Only those settlements, consent judgments, *defence costs* and *investigation costs* that have been consented to by us in writing shall be recoverable as *financial loss* under the terms of this policy (other than as covered under General Extension of Cover 1. 'Advancement of defence costs and other financial loss').

We shall 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.

- (d) If the *insured* withholds consent to any settlement acceptable to the claimant in accordance with our recommendation, then our liability for all *financial loss* or *loss* on account of such *claim* shall not exceed the amount for which we could have settled such *claim* including *defence costs* accrued as at the date such settlement was proposed in writing from us to such *insured*.

11. 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.

12. Limit of Liability

- (a) Subject to the Insuring Clauses within the *cover sections* and Extension of Covers, the *limit of liability* as specified in the *schedule* shall be our maximum liability, in the aggregate, payable under this policy for all:
 - (i) covered *financial loss* or *loss* (including but not limited to *defence costs*) arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable); and
 - (ii) *investigation costs* incurred by all *insured persons* in connection with all *investigations*;
 - (iii) *representation costs* incurred by the *company* in connection with all *investigations*; and
 - (iv) insofar as not encompassed within (i), (ii) and (iii) above, all sums payable under any of the Extensions of Cover.

The *limit of liability* shall apply over and above the applicable *deductible*.

- (b) The *limit of liability* for any applicable *extended reporting period* shall not increase the *limit of liability*.

All *sub-limits* of liability are part of and not in addition to the *limit of liability*, unless expressly stated within an Extension of cover.

- (c) The *director* or *officer excess limit of liability* is in addition to the *limit of liability*.

The *director* or *officer excess limit of liability* is inclusive of all covered *financial loss* including but not limited to *defence costs* and *investigation costs*.

- (d) Where more than one *claim* arises from a *wrongful act*, *wrongful breach* or *electronic publishing claim* or arise from a series of *wrongful acts*, *wrongful breaches* or *electronic publishing claims* which are in any way connected causally with another or which are by any means related or connected, or in the case of one or more *investigations* (whether linked to a *claim* or otherwise) which have a common or related cause or source they shall be deemed to be a single *claim* or a single *investigation* and such single *claim* or single *investigation* shall (irrespective of the *period of insurance* in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting periods* (if applicable) during which the first *claim* of such *claims* was first made or the first *investigation* of such *investigation* series was first commenced.

13. Notification

With respect to all *cover sections* other than Section 5, the *insured* shall, as a condition precedent to our liability under this policy, give written notice to us of:

- (a) any *claim* made against an *insured* or any circumstance that may lead to such a *claim*; or
- (b) any written requirements that an *insured person* or the *company* attend an *investigation* or any circumstance that may lead to such a request,

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 such *investigation*, but in all events no later than 90 days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

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

- (a) *claim* or any circumstance that may lead to such a *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*; or
- (b) *investigation*, or any circumstance that may lead to such a request, 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 become aware of the *investigation*.

Once a circumstance referred to above is notified to us during the *period of insurance*, any subsequent *claim* or *investigation* arising from that circumstance is deemed covered under this policy even if it occurs after the *period of insurance*.

Written notice hereunder shall be provided in writing to:

The Financial Lines Claims Manager
Zurich Australian Insurance Limited
PO Box 677 North Sydney 2059

Or by email to:

The Financial Lines Claims Manager
fl.claims@zurich.com.au

Any notification, sent by post or email, will be effective from the date received by Zurich.

14. Order of payments

In the event of *financial loss* arising from a *claim* or an *investigation* for which payment is due under the provisions of this policy, then we shall in all events:

- (a) first, pay *financial loss* for which coverage is provided under Section 1, Insuring Clause 1. and Section 1 – Extension of Cover 7. 'Investigations'; then
- (b) only after payment of *financial loss* has been made pursuant to General Condition 14. 'Order of payments' (a) above, with respect to whatever remaining amount of the *limit of liability* is available after such payment, pay such other *financial loss* for which coverage is provided under Section 1, Insuring Clause 2. and all other *cover sections* of this policy.

The *company* agrees that we are entitled to withhold payment under Section 1, Insuring Clause 2. and all other *cover sections* until our obligations under Section 1, Insuring Clause 1. and Section 1 – Extension of Cover 7. 'Investigations' are met.

The bankruptcy or insolvency of any *company* shall not relieve us of our obligations to prioritise payment of covered *financial loss* under this policy pursuant to this condition.

15. Other insurance and Non-Accumulation

- (a) To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *financial loss* or *loss* to the extent that the amount of such *financial loss* or *loss* is in excess of any indemnity or cover available to the *insured* in respect of that *financial loss* or *loss* under any other policy of insurance entered into by the *insured persons* or the *company*.
- (b) To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *financial loss* or *loss* to the extent that the amount of such *financial loss* or *loss* is in excess of any indemnity or cover available to the *insured* in respect of that *financial loss* or *loss* under any other policy of insurance effected on behalf of the *insured* or under which any *insured person* or the *company* is a beneficiary (but not a policy to which to which the preceding paragraph applies).
- (c) Neither General Condition 15. (a) or (b) above, applies to such other insurance that is written only as specific excess insurance over the *limit of liability* provided in this policy.
- (d) If the other insurance referred to in General Condition 15. (a) or (b) above, is provided by us, or any other member company, associate or affiliate of the Zurich Financial Services Group of companies, and it covers *financial loss* or *loss* covered by this policy in respect of a *claim* or *investigation*, the *limit of liability* under this policy in respect of that *claim* or *investigation* shall be reduced by any amount paid by us (or member company, associate or affiliate of the Zurich Financial Services Group of companies) under such other insurance.

16. Plurals and titles

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

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa;
- (c) the male includes the female and neuter;
- (d) 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
- (e) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made or an *investigation* is commenced.

17. Recoveries

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

- (a) the costs incurred in the course of such recovery, whether to the *policyholder* or to us;
- (b) to the *policyholder* in respect of any amount of covered *financial loss* or *loss* which exceeds the *limit of liability*;
- (c) to us to the extent of the *financial loss* or *loss* paid or payable;
- (d) to the *policyholder* for the amount of any *deductible* applicable.

18. Severability and Non-Imputation

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

- (a) 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 person* shall be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;

- (b) 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* shall be imputed to the *company* for the sole purpose of determining if coverage is available under Section 1, Insuring Clause 2. 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 coverage under Section 1, Insuring Clause 2. in relation to the *financial loss* of that other *insured person*; and
- (c) 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* shall be imputed to the *company* for the purposes of indemnity under Section 2, Section 3, Section 4 and/or Section 6 in relation to the *financial loss* or *loss* of any *subsidiary*.

19. Subrogation

In respect to *cover sections* 1., 2., 3., 4. and 6. upon any payment of or towards any *claim* we shall be entitled to assume conduct of all rights of recovery available to any *insured* and all reasonable assistance shall be rendered to us in the prosecution of such rights by such *insured persons* or the *company*, at their own cost.

In no event, however, shall we exercise our rights of subrogation against an *insured person* under this policy unless it is determined by a written admission, a final judgment or other adjudication in the underlying action or in a separate action or proceeding that such *insured person* had obtained an illegal profit or advantage or committed an intentionally dishonest act or omission or intentional fraudulent act or a criminal act.

In respect to *cover section* 5. we may at any time at our own expense take such steps as we may deem necessary to obtain reimbursement from any person (or that person's estate) committing a *criminal act* against the *insured* resulting in a *loss* which we have paid or will become liable to pay under this policy and for this purpose use the name of the *insured*. The *company* shall as and when required give all necessary information and assistance to us.

20. Territorial scope

Coverage under this policy, unless noted otherwise in the *cover section* Special Conditions, shall apply to *financial loss* or *loss* incurred, resulting from *claims* made and *wrongful acts*, *wrongful breaches* or *electronic publishing claims* occurring anywhere in the world, where legally permissible.

21. Valuation and foreign currency

All premiums, *limits of liability*, *sub limits*, *deductibles*, *retentions*, *financial loss*, *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 shall 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.

22. Waiver of contribution

We will not pay any *financial loss* or *loss* to the extent that it has been caused or contributed to by the *insured* giving up any right or contribution or indemnity without our prior written consent.

Section 1 – Insured Persons Liability

Introduction

This *cover section* only forms part of your policy when Section 1 – ‘Insured Persons Liability’ is shown with a *limit of liability* in the *schedule*.

Insuring Clauses

1. Directors and officers liability

We will pay to or on behalf of any *insured person* the *financial loss* of such *insured person* which arises from or is a consequence of any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) save to the extent that such *insured person* is indemnified by the *company*.

2. Company reimbursement

We will pay on behalf of the *company* the *financial loss* of an *insured person* which arises from or is a consequence of any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) but only to the extent the *company* has indemnified the *insured person*.

Definitions

The following Definitions shall apply to the words used in this *cover section*. Please refer to the additional General Definitions applicable to all *cover sections*.

Associated company

associated company means a company or legal entity in respect of which, at the inception of the *period of insurance*, the named *policyholder* owns, directly or indirectly, greater than 20% of the issued share capital or voting rights representing the present right to vote for the election of directors, but is not a *subsidiary company*.

Civil or bail bond expenses

civil or bail bond expenses means a fee or premium (and only those that are available at reasonable commercial rates) 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.

Corporate manslaughter proceeding

corporate manslaughter proceeding means a formal criminal proceeding against an *insured person* for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in their capacity as such for the *company* and directly related to the business of the *company*.

Deprivation of assets expenses

deprivation of assets expenses means the payment of the following services, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an *insured person* or creating a charge over real property or personal assets of the *insured person* during the *period of insurance*:

- (a) housing;
- (b) utilities;
- (c) personal insurances; and
- (d) schooling.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted. Expenses will be payable after 30 days following the event above for a period of up to 12 months.

Director or Officer Excess Aggregate Limit of Liability

director or officer excess aggregate limit of liability means the Limit of Liability specified in the *schedule* in respect of all *directors’ or officers’ claims* and *investigations* in the aggregate under Extension of Cover 5. ‘Excess limit of liability for directors or officers’.

Director or Officer Excess Limit of Liability

director or officer excess limit of liability means the Limit of Liability specified in the *schedule* in respect of each *director or officer* under Extension of Cover 5. ‘Excess limit of liability for directors or officers’.

The ‘Directors or Officers Excess Limit of Liability’ shall be a separate *limit of liability* for each *director or officer* and applicable only to that *director or officer*.

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 any replacement legislation in Australia or similar legislation in any other jurisdiction.

Extradition costs

extradition costs means reasonable legal fees, costs and expenses incurred by an *insured person* with our prior written consent, which will not be unreasonably delayed or withheld, to obtain legal advice or to bring or defend an *extradition claim* or any other proceedings including by way of judicial review or other challenge to the political executive’s decision to order an *insured person’s* extradition and to pursue appeals.

Investigation costs

investigation costs for the purpose of this *cover section* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*) incurred with our 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* preparing for and attending an *investigation*.

Investigation costs do not include any fines or penalties, or the equivalent, levied or imposed in connection with the *investigation*.

Judicial order

judicial order means:

- (a) an interim or interlocutory judicial order; or
- (b) a judicial order with respect to any proceeding concerning the deportation of any *insured person*,

provided that any judicial order against an *insured person* shall be in connection with a *claim* against such *insured person* or an *investigation* that is covered under this *cover section*.

Prosecution costs

prosecution costs means the reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employee* of any *company*, costs of their time or overhead of any *company*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, incurred pursuant to Extension of Cover 11. 'Prosecution Costs'.

Shadow director

shadow director means, unless the contrary intention appears, any person who has not been validly appointed as a director, if:

- (a) they act in the position of a director; or
- (b) the directors of the *company* or body are accustomed to act in accordance with the person's instructions or wishes.

However a person is not a shadow director pursuant to paragraph (b) 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.

Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

1. Civil or bail bond expenses

We agree to pay to or on behalf of an *insured person* *civil or bail bond expenses* incurred in respect of a *claim* covered under this *cover section* including but not limited to an extradition proceeding.

2. Court attendance costs

We agree to provide up to \$500 per day for court attendance costs incurred by the *insured person*, if the *insured person* is legally compelled to attend a civil proceeding as a witness in a *claim* which is covered under this *cover section*, whether or not a *wrongful act* is alleged against such *insured person*. Our total aggregate liability during any one *period of insurance* for all court attendance shall not exceed \$100,000.

3. Deprivation of assets expenses

This *cover section* extends to include *deprivation of assets expenses* arising from any *claim* covered under this *cover section* or *investigation* for which an *insured* is entitled to cover under this *cover section* for *investigation costs*.

4. Employment practices claims

This *cover section* extends to cover *employment practices claims* against *insured persons* including in their capacity as *outside entity executives*.

5. Excess limit of liability for directors or officers

In addition to the *limit of liability*, we will pay all *financial loss* on behalf of any *director* or *officer* in accordance with Section 1, Insuring Clause 1. and General Extension of Cover 6. 'Extended reporting period' (a) and Extension of Cover 7. 'Investigations', on the following terms:

- (a) (i) the *financial loss* is otherwise covered by the *cover section*; and
- (ii) our obligation to indemnify is only to the extent that such *insured person* is not lawfully indemnified by the *company* or *outside entity* as applicable;
- (b) coverage provided by this extension of cover shall be specifically excess of, and shall only be available after the exhaustion of:

- (i) the *limit of liability* of this *cover section*;
 - (ii) the overall aggregate *limit of liability* of this policy;
 - (iii) any other policy entered into by or effected on behalf of the *director or officer* or under which the *director or officer* is a beneficiary; and
 - (iv) all other indemnification for *financial loss* available to the *director or officer*.
- (c) the coverage under this extension of cover shall only operate as primary insurance after exhaustion of the sources of indemnification under Extension of Cover 5. 'Excess limit of liability for directors or officers' (b);
- (d) the *limit of liability* for cover under this extension of cover for each *director or officer* for all *financial loss* arising from all *claims* and *investigations* shall be the *director or officer excess limit of liability* specified in the *schedule*. The *directors or officers excess aggregate limit of liability* specified in the *schedule* is the maximum amount payable by us for the *financial loss* of all *directors or officers claims* and *investigations* in the aggregate under this extension of cover.

6. Extradition costs

We agree to pay to or on behalf of:

- (a) an *insured person* *extradition costs* (to the extent permitted by law) in respect of an *extradition claim* covered under this *cover section*;
- (b) an *insured person* the reasonable fees incurred by such *insured person*, with our prior written consent, which shall not be unreasonably withheld, of a counsellor or tax adviser in respect of a covered *extradition claim*; and
- (c) the lawful spouse or domestic partner of an *insured person* in Extension of Cover 6. 'Extradition costs'
 - (a) the reasonable travel, accommodation and living-away-from-home expenses in attending any hearing of such *extradition claim* against that *insured person*.

7. Investigations

We will pay *investigation costs* on behalf of any *insured person*, whether incurred directly by the *insured person*, or by the *company* or *outside entity* pursuant to an indemnity provided to the *insured person*, in respect of any *investigation*:

- (a) into the conduct of such *insured person* in their capacity as a *director or officer* or an *outside entity executive*, whether or not a *wrongful act* is alleged against such *insured person*;
- (b) into the affairs of the *company* or *outside entity* whether or not a *wrongful act* is alleged. Provided such coverage shall not be afforded under 7. (b) for any *investigation* which is in whole or in part:
 - (i) within the jurisdiction of; or
 - (ii) pursuant to the laws of,
 - the United States of America, or its territories or possessions, including but not limited to one conducted by the United States Securities and Exchange Commission (SEC).

Indemnity under this extension of cover arises only when, and is in relation only to *investigation costs* incurred after, such *insured person* is requested in writing by such *official body* to attend such *investigation*, provided that such request to attend first arises during the *period of insurance* or within the *extended reporting period* and the *insured* notifies us in accordance with General Condition 13. 'Notification'. This extension of cover shall not apply to general industry investigations or inquiries or routine regulatory inspections or inquiries.

This extension of cover shall not apply to a *claim* as defined in Definition 'Claim', but the terms, conditions and exclusions of this policy shall apply to this extension of cover as if it were a *claim* including but not limited to the payment of the *deductible* in the *schedule* where the *company* is permitted or required to indemnify the *insured person*.

8. Occupational health and safety

We agree to pay *defence costs* to or on behalf of an *insured person* in respect of a *claim*, and *investigation costs* in respect of an *investigation*, in relation to any alleged breach of occupational health and safety law. This extension of cover applies notwithstanding General Exclusion 2. 'Bodily injury / Property damage'.

This extension of cover includes *defence costs* in relation to any *corporate manslaughter proceedings*.

9. Outside entity executive

We will pay on behalf of any *outside entity executive* subject to the terms and conditions of this *cover section*, *financial loss* arising from any *claim* first made against him or her during the *period of insurance* for a *wrongful act* committed or attempted by or allegedly committed or attempted whilst serving or acting in his or her capacity as an *outside entity executive*.

This cover:

- (a) automatically applies from the date of an *outside entity executive's* appointment to:
 - (i) any *non-profit organisation*; or
 - (ii) any *associated company*.
- (b) automatically applies for a period of 90 days from the date of an *outside entity executive's* appointment to any for profit company, unless we agree to continue to cover any such *outside entity executive* and such for profit company is specifically listed as an *outside entity* in an endorsement attached to this *cover section*.
- (c) does not apply to an *outside entity executive's* appointment to:
 - (i) any *financial institution*;
 - (ii) any 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) any other entity that had negative net assets or negative net worth at the inception date of this *cover section*,

unless Zurich agrees to cover any such *outside entity executive's* appointment to such financial institution or entity noted in (i) to (iii) above, which is specifically listed as an *outside entity* in an endorsement attached to this *cover section*.

Without detracting from the operation of General Condition 15. 'Other insurance and Non-Accumulation', this extension of cover is available only as specific excess cover over and after exhaustion of any other applicable, valid and collectible Directors and Officers or Management Liability policy of insurance and also any indemnification permitted or required to be paid by such *outside entity*.

10. Preservation / presumption of right to indemnity

In the event and to the extent that the *company* or an *outside entity* is permitted or required to indemnify any *insured persons* for *financial loss* or *loss* covered by this *cover section*, but for whatever reason fails or refuses to do so, then we shall pay the *financial loss* or *loss* on behalf of the *insured persons*. In such event, the Insuring Clause 2. *deductible* specified in the *schedule* shall be borne by the *company*.

11. Prosecution costs

We agree to pay for or on behalf of an *insured person* *prosecution costs* of the *insured person* in bringing or defending proceedings, including appealing the decision of such proceeding:

- (a) against an *official body* conducting an *investigation* wherein the *insured person* alleges that the *official body* is acting beyond power or in breach of the rules of natural justice directly in relation to matters affecting, or potentially affecting, the *insured person* in such *investigation*;
- (b) to obtain the discharge or revocation of:
 - (i) a temporary or permanent disqualification of such *insured person* from managing a corporation (including as a senior manager or responsible officer) during the *period of insurance*; or
 - (ii) a *judicial order* entered during the *period of insurance* imposing:
 1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
 2. a charge over real property or personal assets of such *insured person*;
 3. a restriction of such *insured person's* liberty to a specified domestic residence or detention facility; or
 4. deportation of an *insured person* following revocation of otherwise current and valid immigration status for any reason, other than such *insured person's* conviction of a crime.

For the avoidance of doubt, *prosecutions costs* are only available in the event that a *claim* has been made against an *insured person* that is covered by this *cover section*.

12. Tax liability

We agree to pay the liability which an *insured person* incurs personally for the unpaid taxes of the *company* due to the *company's* *financial impairment*. Provided that we shall not include liability that arises due to an *insured person's* criminal, deliberate or wilful breach of any law or regulation.

Section 2 – Company Liability

Introduction

This *cover section* only forms part of your policy when Section 2 – ‘Company Liability’ is shown with a *limit of liability* in the *schedule*.

Insuring Clause

We agree to pay to or on behalf of the *company* any *financial loss* arising out of a *claim* first made against the *company* during the *period of insurance* or any *extended reporting period* (if applicable).

Definition

The following Definition shall apply to the words used in this *cover section*. Please refer to the additional General Definitions applicable to all *cover sections*.

Representation costs

representation costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *company*) incurred with our written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of the *company* directly in connection with its preparation for and attendance at an *investigation*.

Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

1. Indemnity costs for shareholder derivative claims

If the *company* is ordered by a court to pay the costs of the claimants in pursuing a derivative action against *insured persons* (hereinafter ‘indemnity costs for shareholder derivative claims’) this *cover section* is extended to pay such costs provided that such derivative action constitutes a *claim* or *securities claim* otherwise covered under this *cover section*.

2. Occupational health and safety

We agree to pay *defence costs* to or on behalf of the *company* in respect of a *claim*, in relation to any alleged breach of occupational health and safety law. This extension of cover applies notwithstanding General Exclusion 2. ‘Bodily injury / Property damage’.

Our total aggregate liability any one *period of insurance* provided under this extension shall not exceed \$500,000 or the amount specified in the *schedule*.

3. Representation costs

We will pay to or on behalf of the *company* any *representation costs* for the *company* to prepare for and attend:

- (a) any *investigation*, in relation to any alleged breach of an *environmental event*;
- (b) any *investigation*, in relation to any alleged breach of occupational health and safety law;
- (c) any *investigation* brought by an *official body* into the affairs of the *company* whether or not a *wrongful act* is alleged,

first made during the *period of insurance* or within the *extended reporting period* (if applicable).

4. Superannuation schemes

We will pay to or on behalf of the *company* any *financial loss* resulting from any *claim* in connection with any act, error or omission in connection with the operation, administration or sponsorship of any superannuation, profit sharing or *employee* benefits programme whose activities are not controlled by *third party* Superannuation Trustees arrangement.

For avoidance of doubt, no cover under this extension shall apply to the *third party* Superannuation Trustees company.

Our total aggregate liability any one *period of insurance* provided under this extension shall not exceed \$500,000 or the amount specified in the *schedule*.

Exclusions

The following Exclusions shall apply to this *cover section* and we shall not be liable under this *cover section* to make any payment for *financial loss* including *defence costs* (unless otherwise stated) in connection with any *claim* made against the *company*:

1. Contractual liability

based upon, arising out of, or attributable to any liability of the *company* under any contract or agreement, provided that this exclusion shall not apply to any *company* liability that would have attached in the absence of such contract.

2. Other cover sections

where coverage including provisions is made under *cover sections* 3., 4. and 6., whether or not these *cover sections* have been taken.

3. Trading debts

based upon, arising out of, or attributable to any trading or business debt incurred by the *company*.

Please refer to the additional General Exclusions applicable to all *cover sections*.

Section 3 – Employment Practices Liability

Introduction

This *cover section* only forms part of your policy when Section 3 – ‘Employment Practices Liability’ is shown with a *limit of liability* in the *schedule*.

Insuring Clause

We will pay to or on behalf of the *company* any *financial loss* arising out of an *employment practices claim* or cover provided under Extension of Cover 1. ‘Third party liability’ first made against the *company* during the *period of insurance* or any *extended reporting period* (if applicable).

Definitions

The following Definitions shall apply to the words used in this *cover section*. Please refer to the additional Definitions applicable to all *cover sections*.

Employee entitlements

employee entitlements means employee benefits arrangements of any kind (whether during or post employment) including:

- (a) provisions for unemployment, redundancy, retirement, sickness, disability, maternity leave, paternal leave, adoption leave, annual leave, long service leave, compassionate leave or personal leave;
- (b) entitlements under any statute or *industrial instrument* including the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay, time in lieu, allowance and penalties alleged to be due and owing;
- (c) accident, life, medical, disability or other welfare plans, including insurance of any kind;
- (d) superannuation, retirement or pension contributions, benefits and entitlements; or
- (e) profit sharing, stock benefits or deferred compensation plans.

Discrimination

discrimination means violation with respect to such person’s race, national origin, religion, gender, marital status, age, sexual orientation or preference, disability, genetic predisposition, or any other protected class or characteristic established by any jurisdiction’s federal, state or local statutes, rules or regulations, or under any constitutional law or case law authority.

Industrial instrument

industrial instrument means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia, including without limitation the Fair Work Australia and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any law in any other jurisdiction.

Sexual harassment

sexual harassment means any unwelcome sexual conduct, advances, contact or communications including requests for sexual favours.

Extension of Cover

Cover is automatically provided for the Extension of Cover described below for this *cover section*. The Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

1. Third party liability

We will pay to or on behalf of the *company* any *financial loss* arising out of any *sexual harassment* or *discrimination claim* brought by any *third party*.

Exclusions

The following Exclusions shall apply to this *cover section* and we shall not be liable under this *cover section* to make any payment for *financial loss* including *defence costs* (unless otherwise stated) in connection with any *employment practices claim* made against the *company*:

1. Employee entitlements

for breach of duties, obligations or responsibilities pursuant to any contract or provided by any law, regulation, by-law, determination made under or pursuant to any statute, ordinance or *industrial instrument* howsoever promulgated regulating *employee entitlements*.

However, this exclusion shall not apply to any *defence costs* incurred by the *company* with respect to the *employment practices claim*.

2. Employee reinstatement

based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an *employee* including any future *employee entitlements* if the *company* fails to hire, promote or reinstate the claimant as an *employee*.

However, this exclusion shall not apply to any *defence costs* incurred by the *company* with respect to the *employment practices claim*.

3. Industrial relations

based upon, arising out of, or attributable to:

- (a) any collective industrial or labour relations disputes or actions, including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and *employees* in relation to redundancies and other actions that arise; other than *claims* based on an individual employment relationship;
- (b) any collective redundancies or mass-layoffs.

4. Modifications

in respect of or for modifications to any premises in order to make them more accessible or accommodating to persons with disabilities, or for the provision of any special facilities, arrangements, variations or alterations to the work place, working hours, work systems or procedures, for the benefit of disabled persons, persons in special circumstances or persons requiring any form of special accommodation due to family or carer responsibilities, cultural, religious, social or political considerations.

However, this exclusion shall not apply to any *defence costs* incurred by the *company* with respect to the *employment practices claim*.

5. Specified sums under contract

for any sum of money:

- (a) in respect of or in lieu of a notice period;
- (b) pursuant to an express written contract of employment; or
- (c) pursuant to an express written obligation to make payments in the event of the termination of employment.

However, this exclusion shall not apply to any *defence costs* incurred by the *company* with respect to the *employment practices claim*.

6. Worker compensation

based upon, arising from or as a consequence of any actual or alleged obligation of any *insured* pursuant to any workers compensation, unemployment insurance, social security, disability benefits or similar law, regulation or by-law.

Please refer to the additional General Exclusions applicable to all *cover sections*.

Section 4 – Statutory Liability

Introduction

This *cover section* only forms part of your policy when Section 4 – ‘Statutory Liability’ is shown with a *limit of liability* in the *schedule*.

Insuring Clause

We will pay to or on behalf of the *insured* or *employee* any *loss* arising from any *wrongful breach claim* first received by the *company* and notified to us during the *period of insurance* or any *extended reporting period* (if applicable).

Definitions

The following definitions shall apply to the words used in this *cover section*. Please refer to the additional Definitions applicable to all *cover sections*.

Act

Act means:

- (a) any Act of the Parliament of the Commonwealth of Australia and any Act of a Parliament of a State or Territory of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; or
- (b) any Act of the Parliament of New Zealand, including any subordinate or delegated legislation made under those Acts; and
- (c) any amendment, consolidation or re-enactment of any of the above Acts or subordinate or delegated legislation.

Consumer protection act

consumer protection act means:

- (a) any of the following:
 - (i) Fair Trading Act 1985 (Vic);
 - (ii) Fair Trading Act 1987 (NSW);
 - (iii) Fair Trading Act 1987 (SA);
 - (iv) Fair Trading Act 1987 (WA);
 - (v) Fair Trading Act 1989 (Qld);
 - (vi) Fair Trading Act 1990 (Tas);
 - (vii) Fair Trading Act 1992 (ACT);
 - (viii) Consumer Affairs and Fair Trading Act 1996 (NT);
 - (ix) Trade Practices Act 1974 (Cth);
 - (x) Competition and Consumer Act 2010 (Cth); and
- (b) any amendment, consolidation or re-enactment of any of those Acts.

Loss

loss means any *penalty* and *defence costs*.

Penalty

penalty means any monetary sum payable by the *insured* to any *regulatory authority* pursuant to any *Act* for a *wrongful breach* by the *insured* but excluding any:

- (a) amounts payable as compensation;
- (b) compliance, remedial, reparation or restitution costs;
- (c) damages, including any exemplary or punitive damages;
- (d) consequential economic loss;
- (e) legal costs and associated expenses;
- (f) penalty the insurance of which is prohibited at law.

Notwithstanding clause (e), we will pay any reasonable legal costs and associated expenses payable by the *insured* to any *regulatory authority* upon the imposition of a *penalty* covered by this *cover section*.

Provided that where the proceedings that lead to the imposition of the *penalty* also include proceedings in respect of any of the matters set out in clauses (a) to (d), we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in (a) to (d).

Regulatory authority

regulatory authority means a person or entity appointed, constituted or acting under a delegation pursuant to any *Act* for the purposes of enforcement of such *Act* or another *Act*, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

Wrongful breach

wrongful breach means any act, error or omission which occurs after the *date of continuous cover*, and notified to us during the *period of insurance* or the *extended reporting period* (if applicable) whereby:

- (a) the *company* or an *insured person* or *employee* contravenes an *Act* or is involved in the contravention of an *Act*; or
- (b) the *company* or an *insured person* or *employee* commits an offence pursuant to an *Act*.

Extension of Cover

Cover is automatically provided for the Extension of Cover described below for this *cover section*. The Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

1. Outside entity executive

We will pay on behalf of any *outside entity executive* subject to the terms and conditions of this *cover section*, *loss* arising from any *wrongful breach* first made against him or her during the *period of insurance* for a *wrongful breach* committed or attempted by or allegedly committed or attempted whilst serving or acting in his or her capacity as an *outside entity executive*.

This cover:

- (a) automatically applies from the date of an *outside entity executive's* appointment to:
 - (i) any *non-profit organisation*; or
 - (ii) any *associated company*.
- (b) automatically applies for a period of 90 days from the date of an *outside entity executive's* appointment to any for profit company unless we agree to continue to cover any such *outside entity executive* and such for profit company is specifically listed as an *outside entity* in an endorsement attached to this *cover section*.

Without detracting from the operation of General Condition 15. 'Other insurance and Non-Accumulation', this extension of cover is available only as specific excess cover over and after exhaustion of any other applicable, valid and collectible Statutory Liability or Management Liability policy of insurance and also any indemnification permitted or required to be paid by such *outside entity*.

Exclusions

The following Exclusions shall apply to this *cover section* and we shall not be liable under this *cover section* to make any payment for *loss* including *defence costs* (unless otherwise stated) in connection with any *wrongful breach claim* made against an *insured*:

1. Corporations / Commerce Acts

based upon, attributable to or in consequence of:

- (a) a *wrongful breach* of any *consumer protection act*. Exclusion 1 (a) does not apply to *directors or officers* or *employees* for *claims* arising in the performance of their duties as *directors or officers* and *employees*;
- (b) for any *loss* or part of any *loss* which is attributable to the period after the *insured* knew (or ought reasonably to have known) that its conduct was a *wrongful breach*;
- (c) any contravention of sections 182, 183, 588G, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections;
- (d) any contravention of sections 78, 80, 83 or 89 (3) (b) of the New Zealand Commerce Act 1986 and any amendment, consolidation or re-enactment of any of those sections; or
- (e) a *wrongful breach* of any of the following New Zealand Acts; Arms Act 1983, Aviation Crimes Act 1972, Crimes Act 1961, Proceeds of Crime Act 1961, Summary Offences Act 1981, Transport Act 1962, Transport (Vehicle and Driver Registration and Licensing) Act 1986.

However this exclusion shall only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the *insured*.

2. Taxes

based upon, attributable to or in consequence of a *wrongful breach* by the *insured* in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

3. Vehicle operation

based upon, attributable to or in consequence of:

- (a) a *wrongful breach* relating to the regulation of road rules for drivers of vehicles;
- (b) a *wrongful breach* relating to the regulation of air or marine traffic.

4. Wilful and intentional breaches

based upon, attributable to or in consequence of:

- (a) any wilful, intentional or deliberate *wrongful breach*;
- (b) a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any *Act*;
- (c) any *wrongful breach* caused by gross negligence or recklessness by the *insured*;
- (d) a dishonest, fraudulent, malicious act or omission of the *insured*.

However this exclusion shall only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the *insured*.

Please refer to the additional General Exclusions applicable to all *cover sections*.

Special Conditions

The following Special Conditions shall apply to this *cover section*. Please refer to the additional General Conditions applicable to all *cover sections*.

1. Notices under Acts

The *insured* shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate *regulatory authority* under any *Act* within the time specified or if no time is specified, within a reasonable time.

2. Reasonable care

The *insured* shall take reasonable care at all times to:

- (a) only employ competent *officers, employees, agents and contractors*;
- (b) comply and ensure that its *directors or officers, employees, agents and contractors* comply with the provisions of any *Act*; and
- (c) maintain all premises, fittings and plant in a safe and sound condition.

3. Territorial scope

Coverage under this *cover section* is limited to *loss or investigations* carried out in Australia and/or New Zealand only.

Section 5 – Commercial Crime

Introduction

This *cover section* only forms part of your policy when Section 5 – ‘Commercial Crime’ is shown with a *limit of liability* in the *schedule*.

Insuring Clause

We will pay to or on behalf of the *company* any *loss* sustained by an *insured* as a direct result of a *criminal act* provided the *loss* is first *discovered* during the *period of insurance* or any *extended discovery period* (if applicable).

Definitions

The following Definitions shall apply to the words used in this *cover section*. Please refer to the additional General Definitions applicable to all *cover sections*.

Act of terrorism

act of terrorism means an act including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Client

client means a customer of an *insured* to whom such *insured* provides goods or services under a written contract, for a fee or other monetary consideration.

Computer fraud

computer fraud means *loss* of the *company's* money, *securities* or *property* due to any fraudulent or dishonest misuse or manipulation by a *third party* of the computer systems, programs or funds transfer systems owned or operated by the *insured*.

Corporate transaction

corporate transaction means any transaction involving the purchase or sale of shares, equity, debt or assets of any entity.

Counterfeit or counterfeiting

counterfeit or *counterfeiting* means the intentional imitation of any currency notes or coins such that an *insured* is deceived on the basis of the quality of the imitation to believe that the imitation is the authentic original currency.

Credit card fraud

credit card fraud means the *forgery* or alteration of, on or in, any written instrument required in connection with any credit card issued to an *insured*, to any *director* or *officer*, or any partner or to any *employee* of the *insured*.

Criminal act

criminal act means any *internal crime* or *external crime*.

Data reconstitution costs

data reconstitution costs means reasonable costs (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, and the cost of their time or costs or overhead of any *insured*) incurred in reproducing or amending the software programs or systems where such reproduction or amendment is necessary to correct damage caused to the programs or to amend the security codes following a *criminal act* in respect of the use of the computer hardware or software programs or systems owned and operated by the *insured* and which was the subject of a *loss* under this *cover section*.

Discovered or discovery

discovered or *discovery* means the moment on which the *insured* or any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof, not in collusion with any person(s) committing the *criminal act*, becomes aware of any fact or facts that give reasonable grounds to believe that *loss* as insured under this *cover section* has been or may be incurred even though the exact amount or details of the *loss* may not then be known.

External crime

external crime means any fraudulent or dishonest single, continuous or repeated act(s) or a series of acts committed by a *third party* of:

- (a) *theft*;
- (b) *forgery*;
- (c) *fraudulent alteration*;
- (d) *counterfeiting*;
- (e) *computer fraud*;
- (f) crime not otherwise insured or excluded under this definition where the *third party* obtained *improper financial gain* and intended to cause the *insured* a *loss* and is found guilty and convicted by a final judgment in a recognized criminal court of law of such criminally sanctioned act.

external crime shall in no event mean:

- (i) *corporate transaction*;
- (ii) *voluntary exchange* or *purchase* unless covered under *forgery*, *fraudulent alteration*, *counterfeiting* or *computer fraud*;
- (iii) *extortion*.

Extended discovery period

extended discovery period means the relevant period of cover stated in the *schedule*.

Extortion

extortion means any threat to personally injure *employees* or *directors* or *officers* or their family members, or to damage or destroy any tangible property (including computer systems, software or programs) owned by the *insured* or for which the *insured* is legally liable, provided that prior to surrender of the money, *securities* or *property*, the person receiving the threat has made a reasonable effort to report the threat to another *employee* or *director* or *officer*, and the *insured* has made a reasonable effort to report the threat to the relevant authority.

Financial instrument

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

Forgery

forgery means:

- (a) the signing by hand of another natural person's name; or
- (b) the endorsing or amending by hand without authority, of any cheque, draft, promissory note or bill of exchange given or received by an *insured* with the intent to deceive in consequence of which the *insured* has acted or transferred funds or goods.

Mechanically or electronically produced or reproduced signatures shall be treated as hand written signatures.

Fraudulent alteration

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

Improper financial gain

improper financial gain means any person gaining any *property*, money or *securities* from the *insured* to which that person was not legally entitled. *Improper financial gain* shall in no event include salaries, bonuses, fees, commissions, promotion, emoluments or other remuneration.

Internal crime

internal crime means any fraudulent or dishonest single, continuous or repeated act(s) or series of acts committed by an *employee* acting alone or in collusion with others to cause a *loss* to the *insured* or to obtain an *improper financial gain* from the *insured*.

In respect of any *internal crime* committed by any *employee* who is engaged in trading or dealing in stocks, shares, equities, bonds, securities, valuable papers, commodities, foreign exchange, derivatives, loans, transactions in the nature of a loan or other extension of credit and the like, the *insured* must prove that such *internal crime* was committed by the *employee* causing the *insured* to suffer such *loss* or to obtain an *improper financial gain* for that *employee* or for any other individual or organisation.

Investigation costs

investigation costs for the purpose of this *cover section* means all reasonable and necessary costs incurred by the *insured* to establish the amount of a *loss* (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, cost of their time or costs or overhead of any *insured*) with our written consent in connection with a covered *loss* to be paid under this *cover section* where the *loss* is excess of the applicable *deductible*.

Loss

loss means the direct financial loss of any *property*, money or *securities* sustained by an *insured* as a direct result of a *criminal act* and shall include *investigation costs* and *data reconstitution costs*.

Loss investigator

loss investigator means a Zurich appointed investigator and/or forensic expert.

Preliminary expenses

preliminary expenses means up to 8 hours of time spent by a *loss investigator* assisting the *insured* with the *investigation* of its *loss* and the production of its proof of loss.

Property

property means tangible property of an *insured* other than money or *securities*.

Securities

securities for the purpose of this *cover section* means any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or *property*. *Securities* shall not include money or *property*.

Superannuation fund

superannuation fund means any superannuation fund established and sponsored solely by the *insured* and solely to provide retirement benefits to the *insured's* past, present or future *employees, directors* and *officers* or their respective beneficiaries.

Theft

theft means the unlawful permanent deprivation of money, *securities* or property, whether from the *insured's* premises or in transit or otherwise. For the avoidance of doubt, *theft* includes robbery.

Voluntary exchange or purchase

voluntary exchange or *purchase* means the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of money, *securities* or *property* in any exchange or purchase.

Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

1. Care, Custody and Control

We shall indemnify the *company* for the *loss* of *property*, money or *securities* under the care, control and custody of an *insured* and for which such *insured* is legally liable.

For the purposes of this extension only, the definition of *property* is amended as follows:

'*property*' shall mean any tangible property other than money or *securities*.

2. Client liability

We shall indemnify the *company* for the direct loss sustained by a *client* from *improper financial gain* committed by an *employee* not in collusion with such *client's* directors or employees, where such *loss* is *discovered* during the *period of insurance* or the *extended discovery period* (if applicable).

3. Contractual penalties

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

Our total aggregate liability provided under this extension shall not exceed \$100,000 or the amount specified in the *schedule*.

4. Credit card fraud

We shall indemnify the *company* for direct loss suffered by an *insured* resulting from *credit card fraud* committed by a *third party* which direct *loss* is *discovered* during the *period of insurance* and the *extended discovery period* (if applicable).

5. Crime investigations costs

We shall indemnify the *company* for *investigation costs* incurred by an *insured*, which are directly related to a *loss* covered under this *cover section*.

Our total aggregate liability provided under this extension shall not exceed \$100,000 or the amount specified in the *schedule*, which is in addition to the *limit of liability* for this *cover section* or the total aggregate *limit of liability* for this policy.

6. Data reconstitution costs

We shall indemnify the *company* for reasonable *data reconstitution costs*.

7. Erroneous fund transfer

We shall indemnify the *company* for *loss* resulting from unlawful taking by a *third party* of money or *securities* erroneously directed or erroneously transferred by an *insured*.

8. Extended discovery period

If this *cover section* upon termination is neither renewed nor replaced by any other policy covering the same or a similar risk, the *policyholder* shall have the right to a single *extended discovery period* as stated in the *schedule* and subject to payment of the additional premium stated in the *schedule*. Any *loss discovered* during such *extended discovery period* and notified to us in accordance with Special Condition 1, 'Discovery' of this *cover section*, shall be considered for cover, but only with respect to *criminal acts* committed prior to the termination date of the *period of insurance*. This *extended discovery period* shall not apply in the event of cancellation of this policy due to the non-payment of the premium.

The right to the single *extended discovery period* shall terminate unless written notice is given to us by the *policyholder* within thirty (30) days of the effective date of the non-renewal of this policy. Once the *extended discovery period* has been elected by the *policyholder* the entire premium for the *extended discovery period* shall be deemed earned at its commencement.

9. Loss investigator

We shall pay the *preliminary expenses* of a *loss investigator* on behalf of the *company*, following notification by an *insured* of its discovery of a *loss* in accordance with Special Condition 1, 'Discovery' of this *cover section*. The *insured* may request the appointment of a *loss investigator* to assist with the investigation of its *loss* and production of its proof of *loss*. It shall be the right and duty of Zurich and not of the *insured* to appoint the *loss investigator*.

Following the exhaustion of the *preliminary expenses* of the *loss investigator*, if the *insured* continues the retainer of the *loss investigator*, the costs of the *loss investigator* may be considered under Extensions of Cover 5. 'Crime investigation costs' subject to all relevant terms and conditions noted therein.

Exclusions

The following Exclusions shall apply to this *cover section* and we shall not be liable under this *cover section* to make any payment for *loss* in respect of any:

1. Consequential loss

consequential loss directly or indirectly arising from or in connection with any *loss*, unless covered under Extension of Covers 5. 'Crime investigation costs' or 6. 'Data reconstitution costs'.

2. Fire

loss caused by any fire.

3. Intellectual property rights and trade secrets

loss of or arising from the accessing of any confidential information including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods, except to the extent that any such information is used to support or facilitate the committing of a *criminal act* covered by this *cover section*.

4. Kidnap and Ransom

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

5. Known criminal acts

loss caused by any *employee* whom the *insured* was aware had previously committed a *criminal act* before or after the date of commencement of employment by the *insured*.

6. Specific documents

loss in connection with the *forgery*, *counterfeit* or *fraudulent alteration* of, on or in, any account receivable, or assignments thereof, bills of lading, warehouse or trust receipts, or receipts serving a similar purpose.

However, this exclusion shall only apply to *external crime*.

7. Trade finance and Trade loans

loss resulting from the full or partial non-payment of or default under any:

- (a) credit agreement, extension of credit or hire purchase agreement;
- (b) loan or transaction of the nature of a loan;
- (c) lease or rental agreement; or
- (d) invoice, account, agreement or any other evidence of debt.

However, this exclusion shall only apply to *external crime* and then shall not apply to any *loss* where the *insured* has relied or acted upon any document that contains *forgery*, *fraudulent alteration* or *counterfeiting* of currency notes or coins.

8. War, Act of terrorism

loss caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- (a) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

Please refer to the additional General Exclusions applicable to all *cover sections*.

Special Conditions

The following Special Conditions shall apply to this *cover section*. Please refer to the additional General Conditions applicable to all *cover sections*.

1. Discovery

The *insured* as a condition of coverage shall, upon the *discovery* of *loss*, provide written notice to us within 90 days of such *discovery* but in any event prior to the determination date of the policy or the *extended discovery period*.

Written notice shall include but not be limited to full particulars as to dates and persons involved, the date and manner in which the *insured* first became aware of the matters underlying the *loss*. All notices under any provision of the policy shall be put in writing and supplied as per the General Condition 13. 'Notification'.

2. Knowledge

Knowledge possessed or *discovery* made by any person, company or entity forming part of the *insured* or by any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof shall be deemed to constitute knowledge possessed or *discovery* made by all other persons, companies or entities forming part of the *insured*.

3. Proof of loss

The *insured* shall furnish a proof of loss with full particulars of the *loss* to Zurich as soon as reasonably possible in support of its claim under this *cover section*. Unless otherwise agreed, a reasonable time frame will be deemed to be 12 months from the date of *discovery*.

The *insured* may not offer, as a part of any proof of *loss*, any computation or comparison which involves in any manner a profit and loss computation or comparison. The *insured* may offer a comparison between an *insured's* inventory records and actual physical counts of its inventory to prove the amount of loss only where an *insured* establishes that, wholly apart from such comparison, it has sustained a covered *loss* caused by an *employee*.

4. Territorial scope

Coverage under this *cover section* is limited to *loss* carried out in Australia and/or New Zealand only.

5. Valuation of losses

(a) Securities

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

(b) Books of accounts and Records

In the case of *loss* of or damage to *property* consisting of books of accounts or other records (other than electronic data) used by the *insured* in the conduct of their business, we shall be liable under this *cover section* only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which shall have been furnished by the *insured* in order to reproduce such books and other records.

(c) Electronic data

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

(d) Damage to premises

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

(e) Foreign currency

If a foreign currency (being a currency other than the currency in which this *cover section* is written) is involved in a *loss* sustained by the *insured* under this *cover section*, then for the purpose of any calculation required in the settlement of a *loss*, the rate of exchange shall be the published rate in the Australian Financial Review on the date of such *discovery*.

(f) Property

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

Section 6 – Internet Liability

Introduction

This *cover section* only forms part of your policy when Section 6 – 'Internet Liability' is shown with a *limit of liability* in the *schedule*.

Insuring Clause

We will pay to or on behalf of the *company* the *financial loss* in respect of any *claim* sustained by an *insured* which is a direct result of an *electronic publishing claim* which is first made against such *insured* during the *period of insurance* or the *extended reporting period* (if applicable).

Definitions

The following Definitions shall apply to the words used in this *cover section*. Please refer to the additional Definitions applicable to all *cover sections*.

Electronic data

electronic data means information that exists in electronic form, including *personal information*. *Electronic data* does not include *software*.

Electronic publishing

electronic publishing means the reproduction, publication, dissemination, transmission or release of information, including *electronic data*, image files, audio files or text, on the *insured's* internet website; provided that such information must have been developed by or for the *insured* or acquired by the *insured* for its use.

Electronic publishing claim

electronic publishing claim means any actual or alleged:

- (a) libel, slander, trade libel or disparagement resulting from the *electronic publishing* of material that defames a person or organisation or disparages a person's or organisation's goods, products or services;
- (b) plagiarism, false light or false advertising resulting from the *insured's electronic publishing* activities;
- (c) violation of the right of privacy or seclusion or right of publicity of any person other than an *insured person* or an *employee* resulting from the *electronic publishing* of material that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
- (d) infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including, without limitation, infringement of domain name, deep-linking or framing, resulting from the *insured's electronic publishing* activities; or
- (e) unauthorised use of titles, formats, performances, style, characters, plots or other protected material resulting from the *insured's electronic publishing* activities.

Personal information

personal information means any information from which an individual may be uniquely and reliably identified or contacted, including an individual's name, telephone number, social security number, medical or healthcare data or other protected health information, driver's license number or state identification number, account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non public personal information as defined in Privacy Act 1988 (Cth).

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

Software

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

Exclusions

The following Exclusions shall apply to this *cover section* and we shall not be liable under this *cover section* to make any payment for any *claim* in connection with an *electronic publishing claim* made against the *company*:

1. Fitness for purpose

based upon, arising out of or attributable to any actual or alleged inaccurate or misleading description of the price or quality or fitness of purpose of any product, including the failure of any product to conform with any advertised standard of quality, performance or fitness for purpose or otherwise to satisfy any standard of quality, performance or fitness or purpose.

2. Fraud

based upon, arising out of or attributable to the:

- (a) theft of computer or video game points, earnings awards or other intangible property; or
- (b) uploading or downloading of digitised music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games.

3. Restrictive trade practices

based upon, arising out of or attributable to any actual or alleged unfair competition, deceptive or unfair trade practice, consumer fraud, price fixing, restraint of trade, monopolization, consumer fraud or other violation of the Competition and Consumer Act 2010 (Cth), or any other federal, state, local, foreign or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade.

4. Royalties and Fees

based upon, arising out of or attributable to licensing fees or royalties ordered, directed or agreed to be paid by the *insured* pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement, for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name, or other protected intellectual property.

5. Spam Act

based upon, arising out of or attributable to any unsolicited electronic dissemination of faxes, emails, or other communications to multiple actual or prospective customers by the *insured* or any other third party, including actual or alleged violations of:

- (a) the Spam Act 2003 (Cth), taking into account amendments within the Competition and Consumer Act 2010 (Cth);
- (b) the United States Telephone Consumer Protection Act (TCPA) or the Canadian Spam Act of 2003, including any amendment of or addition to such law; or
- (c) any other federal, state or foreign anti-spam statute or federal, state or foreign statute, law, ordinance or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information in any foreign jurisdiction.

6. Trade secrets

based upon, arising out of or attributable to any patent infringement or theft, copying, misappropriation, display or publication of any trade secret, or any infringement of copyright, trademark or service mark of software or software technology, or upon data, sounds, images or similar matter incorporated into or otherwise part of the *insured's* products.

Please refer to the additional General Exclusions applicable to all *cover sections*.

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