



Employment Practices Liability Insurance

Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations..

Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

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

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

Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure, we may treat your policy as if it never existed.

Our contract with you

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

The Policy is made up of:

- the Policy Wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *proposal* which is the information provided to us when applying for insurance cover;
- the most current Policy Schedule issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the Policy Schedule are insured.

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

Employment Practices Liability Insurance

In consideration of the payment of the premium, and in reliance upon the statements made in the *proposal*, and subject to the terms of this Policy (including any endorsement hereto), coverage under this Policy is afforded solely for *financial loss* resulting directly from *claims* first made against the *insured* or *loss prevention services* or other Extensions of Cover first occurring during the *period of insurance* or the *extended reporting period* (if applicable) and notified to us as required by Section 6 of this Policy.

1. Insuring Clauses

1.1 Employment Practices Liability cover

We agree to pay to or on behalf of an *insured* the *financial loss* arising from a *claim* made against such *insured* by or on behalf of an *employee* of the *company* for a *wrongful employment act*.

1.2 Third Party Liability cover

We agree to or on behalf of an *insured* the *financial loss* arising from a *claim* made against such *insured* by or on behalf of any natural person other than an *insured person* for a *wrongful discrimination act*.

1.3 Employment Investigations

We agree to pay the *employment related investigation costs* of an *insured person* resulting from an *employment related investigation*.

2. Extensions of Cover

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

2.1 Extradition

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

The cover provided under this Extension, for clauses defined under definition 4.15.2 and 4.15.3, shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

2.2 Employment Training and Programs

We will pay for all reasonable and necessary fees and costs incurred by the *company* for educational, sensitivity or diversity training or minority development programs that the *company* is legally obligated to institute pursuant to a covered *claim* and within one year of a judgment, arbitration award or settlement of a *claim*.

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

2.3 Loss Prevention Services

If during the *period of insurance* and with our prior approval, the *insured* incurs fees or costs for *loss prevention services* and a *claim* subsequently is made during the *period of insurance* or the *extended reporting period* (if applicable), the total amount paid by the *insured* for such *loss prevention services* shall be credited against the applicable *retention* up to a maximum specified of the *schedule*.

This credit shall only apply to the first *claim* made and reported after the *loss prevention services* were provided.

2.4 Cyber Incident and Loss of Employee Data

We will pay for all reasonable and necessary costs and expenses incurred by the *company* for the hiring of an IT security consultant to review and revise existing data protection policies or develop an internal incident response plan in connection with a covered *claim* made against an *Insured* that arise from a *cyber event* or in case of other loss of or failure to secure a *company's employee data*.

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

2.5 Public Relations Expenses

We will pay to or on behalf of the *company* any *public relations expenses* which the *company* incurs in connection with a *workplace violence event*, first occurring and reported to us during the *period of insurance*.

A *workplace violence event* first occurs when the *company* or any of its *employees* first becomes aware of the *workplace violence event*.

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

2.6 Emergency Costs

If our required prior consent cannot reasonably be obtained in a timely manner by an *insured* before *defence costs*, *employee related investigation costs* or *extradition costs* are incurred, with respect to a covered *claim*, we shall provide retroactive approval, provided that notification is made to us within fourteen (14) days of such costs being incurred and in accordance with Section 6.4 of this Policy.

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

2.7 Extended Reporting Period

2.7.1 Non-Renewal

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

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

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

2.7.2 Change in Control

In the event of a *change in control*, the *policyholder* does not have the right to automatically elect an *extended reporting period* as set out under 2.7.1 above but shall be entitled to request an offer from us for an *extended reporting period*, subject to the *policyholder* making a request for such *extended reporting period* no later than thirty (30) days after the *change in control*, unless a period extension is otherwise granted through a different provision of this Policy, and duly paying the applicable additional premium.

With respect to the foregoing clauses 2.7.1 to 2.7.2, cover during the *extended reporting period* is provided up to the amount of the remaining unexhausted *limit of liability* available for this Policy.

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

- (i) the renewal of this Policy by us; or
- (ii) the replacement of this Policy by any other insurance policy, issued by us or any other insurance company, covering wholly or substantially or partially the same risk.

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

3. Changes in Risk

3.1 Changes in Subsidiary

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

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

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

3.2 New Subsidiaries

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

- 3.2.1 has total consolidated assets for the last complete accounting period prior to the acquisition which are greater than twenty-five per cent (25%) of the total consolidated assets that the *policyholder* declared at the inception of this *period of insurance* or reported in the latest audited annual report, or
- 3.2.2 has a greater number of *employees* in the United States of America than the threshold specified in the *schedule*; or
- 3.2.3 has a greater number of *employees* in the rest of the world than the threshold specified in the *schedule*.

If a newly acquired or created *subsidiary* falls into 3.2.1 to 3.2.3 above, such entity will be covered under this Policy, but only for a period of thirty (30) days from the effective date of acquisition or creation by the *policyholder*, or until the end of the *period of insurance*, whichever occurs first, provided the *policyholder* pays any additional premium required by us in connection with such new *subsidiary*.

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

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

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

3.3 Change in Control

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

As a condition precedent to coverage under this Policy, the *policyholder* shall give notice to us of such *change in control* as soon as reasonably practicable, however no later than thirty (30) days after the *change in control*.

Notwithstanding the effect on cover caused by such *change in control* there shall be no entitlement to cancellation of this Policy by any party (other than for non-payment of premium) and the entire premium for this Policy shall be deemed to have been fully earned as of the date of such *change in control*.

4. Definitions

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

4.1 Bodily injury

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

4.2 Change in Control

change in control means:

4.2.1 any event wherein any person, entity or group:

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

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

4.2.3 any government, quasi-government or government agency (including the International Monetary Fund), other regulatory agency, body or funding entity or financial stability fund:

- (i) assuming the voting control of a shareholders' meeting of the *policyholder*;
- (ii) dismissing the Board of Directors of the *policyholder*;
- (iii) appointing a management committee of the *policyholder*;
- (iv) taking over the operations of the *policyholder* either in part or in whole, or disposing of such an undertaking, either in part or in whole.

4.3 Claim

claim means:

4.3.1 a written demand, at the time of the *insured's* receipt of such demand, for monetary or non-monetary or injunctive relief or other legal relief;

4.3.2 a civil proceeding (including any counter-claim) commenced by the service of a complaint, summons, statement of claim, writ or similar pleading;

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

4.3.4 arbitration proceeding against any Insured or mediation or other dispute resolution process, alleging a *wrongful act*; and

4.3.5 for the purposes of determining cover and the applicability and interpretation of the terms and conditions of Section 3, 5, 6 and 7 of this Policy, the term *claim* shall also include an *employment related investigation, extradition claim and workplace violence event*.

Claim shall not include any negotiations, enforcement, cancellation of, or non-adherence to, or any other disputes arising out of collective labour agreements.

4.4 Company

company means:

- 4.4.1 the *policyholder*;
- 4.4.2 any *subsidiary*; and
- 4.4.3 an *employee benefit plan*.

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

4.5 Cyber event

cyber event means:

- 4.5.1 a *privacy event*; and/or
- 4.5.2 a *security event*.

4.6 Defence costs

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

- 4.6.1 by or on behalf of the *insured* in the investigation, defence, discharge, dismissal, adjustment, settlement or appeal of any *claim*;
- 4.6.2 by any accredited expert retained through defence lawyers, on behalf of the *insured* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*;
- 4.6.3 by the *insured* in conducting any proceeding for indemnity, contribution or recovery relating to such *claim*; and
- 4.6.4 by the *insured* in the pursuit of any appeal from a final award of a court, tribunal or alternative dispute resolution process binding on the *insured* and resulting from such *claim*.

4.7 Discrimination

discrimination means violation in employment of a person's civil rights 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.

4.8 Employee

employee means any natural person whose labour or service is directed by the *company*, in the ordinary course of its business, and whom the *company* compensates by salary, wages and/or commissions, including without limitation:

- 4.8.1 any person who is employed by the *company* regardless of whether such person is a past, present, prospective, part-time, *company* temporary, seasonal, contract, or leased employee;
- 4.8.2 a volunteer of the *company*; or
- 4.8.3 an independent contractor of the *company*.

4.9 Employee benefit Plan

employee benefit plan means any pension fund established and sponsored solely by the *policyholder* or any *subsidiary* solely to provide pension plan benefits to the *company's* past, present or future *employees*, directors and officers or their respective beneficiaries.

For the purposes of this Definition 4.9, independent contractors as specified in clause 4.8.3 shall not be deemed *employees*.

4.10 Employment related investigation

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

4.10.1 into the affairs of the *company* or an *insured person*, commenced by or brought by an *official body*, once an *insured person* is required in writing (including by the service of a target letter or Wells Notice) by the *official body* to:

- (a) attend an interview; or
- (b) provide information but only where there are reasonable grounds to anticipate that a *claim* may be made against that *insured person* by such *official body* in connection with the subject matter of the information request.

4.10.2 of an *insured person* commenced by the arrest and detainment or incarceration of such *insured person* by any law enforcement authority.

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

Employment related investigation shall not include industry-wide or sector investigations, hearings, examinations or inquiries or any regular or routine regulatory audit, examination, inspection or review, including any request for mandatory information from any regulatory entity.

4.11 Employment related investigation costs

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

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

4.12 Extended reporting period

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

4.13 Extradition

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

4.14 Extradition claim

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

4.15 Extradition costs

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

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

- 4.15.2 an *insured person* retaining the services of an accredited crisis counsellor and/or tax advisor and/or public relations consultant, exclusively and directly in connection with the *extradition* of that *insured person*. Provided that our maximum aggregate limit for all such fees, costs and expenses under this clause for all *insured persons*, combined, shall be the applicable *sub-limit of liability* specified the *schedule*; or
- 4.15.3 the overseas travelling costs (one round trip) and accommodation for the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*. Provided, that our maximum aggregate limit for all such fees, costs and expenses under this clause for all *insured persons*, spouses/partners and children, combined, shall be the applicable *sub-limit of liability* specified in the *schedule*.

4.16 Financial loss

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

- 4.16.1 compensatory damages and related costs resulting from a *claim* made against such *insured*, for which coverage applies, awarded pursuant to a final judgment or other final adjudication of a court or tribunal by whose jurisdiction the *insured* is bound, or following arbitration or other alternative dispute resolution processes whose findings are binding upon the *insured*, including, but not limited to judgments (and any award of pre-judgment and post-judgment interest on, and plaintiff's or claimant's legal fees awarded with respect to covered damages or compensation for damages awarded by an *official body*;
- 4.16.2 punitive damages, including exemplary and multiplied damages, provided however that such damages shall constitute *financial loss* only to the extent that they are insurable under the applicable law of this Policy, and in the jurisdiction (i) in which such damages are assessed or imposed, and (ii) such *claim* is made or brought or (iii) the *wrongful act* that gave rise to a *claim* took place;
- 4.16.3 a settlement negotiated by the *insured* with our prior consent in accordance with the provisions of this Policy;
- 4.16.4 *defence costs*;
- 4.16.5 *employment related investigation costs* with respect to Insurance Clause 1.3, *extradition costs* and *public relations expenses*; or
- 4.16.6 amounts as set forth in the following Extensions of this Policy:
- (i) 2.2 – Employment Training and Programs;
 - (ii) 2.3 – Loss Prevention Services; or
 - (iii) 2.4 – Cyber Incident and Loss of Employee Data.

Financial loss, other than *defence costs*, does not include any of the following:

- 4.16.7 compensation earned by the claimant in the course of employment but not paid by the *company*, including but not limited to: (i) any unpaid salary, (ii) wages, (iii) overtime, (iv) bonus, (v) stock-based benefits, rights, incentive or other compensation whose value is imputed or derived in any way from the value of the securities of the *company*, including but not limited to stock options, stock grants, restricted stock, stock warrants, stock performance shares or units, stock appreciation rights, or phantom stock plans or arrangements, (vi) severance or redundancy pay, (vii) retirement benefits or pension benefits under an *employee benefit plan*, (viii) unpaid reimbursement of Employee expenses, vacation days or sick days;
- 4.16.8 any amount for which the *insureds* are absolved from payment by any covenant, agreement or court order, including but not limited to any amount stemming from resolution of collective bargaining, union or works council proceedings;
- 4.16.9 amounts owing under or assumed by the *insured* pursuant to any express written contract or agreement with the *insured*;

- 4.16.10 taxes, social security contributions or employment related benefits, fines or penalties imposed by law, other than liquidated damages awarded under the U.S. Age Discrimination in Employment Act or the U.S. Equal Pay Act or any similar provisions of law in any other jurisdiction;
- 4.16.11 medical, insurance or other benefits (or the equivalent value thereof) to which the claimant alleged was entitled or should have been entitled;
- 4.16.12 costs to comply with any consent decree, injunctive, restitutionary, affirmative, interim or other non-monetary relief or any agreement to provide any such relief, including costs associated with any obligation to adjust or adapt any premises, building or machinery or make any other adjustments or reasonable accommodations required by, or as result of, or to conform with the requirements of the United States Americans with Disabilities Act (ADA) or any amendments thereto, or replacements thereof, or any jurisdiction's similar federal state, or local statute, regulation, or statutory or common law;
- 4.16.13 any award made in respect of the failure by the *insured* to inform or consult with *employee* representatives or unions or workers councils in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
- 4.16.14 any protective award in respect of the failure to comply with the collective consultation process in the event of redundancies; or
- 4.16.15 matters which are uninsurable under the law pursuant to which this Policy is construed.

4.17 Harassment

harassment means mean any unwelcome sexual conduct, advances, contact or communications or any other form of harassment.

4.18 Insured

insured means any:

- 4.18.1 *insured person*; and
- 4.18.2 the *company*.

Insured shall not include any auditor, receiver, conservator, liquidator, administrator, trustee, rehabilitator or similar official elected by or appointed to the *company*.

4.19 Insured person

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

- 4.19.1 duly elected or appointed director or officer of the *company* whilst acting in such capacity on behalf of the *company*; and
- 4.19.2 *employee* of the *company*, other than independent contractors as specified in clause 4.8.3 and prospective employees.

Insured person is extended to include:

- 4.19.3 a lawful spouse or person recognised by law as a domestic partner; and
- 4.19.4 estates, heirs, legal representatives (such as a guardian, administrator or receiver in bankruptcy) or any assigns or executor of a deceased, incompetent, insolvent or bankrupt estate,

of an *insured person* referred to in clauses 4.19.1 to 4.19.2 above, but solely in relation to *wrongful acts* by such *insured person*, and only in the event and to the extent that such *financial loss* would be covered under this Policy if incurred by such *insured person*.

4.20 Interrelated wrongful acts

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

4.21 Limit of liability

limit of liability means the Limit of Liability stated in the *schedule* which will be our maximum liability, in the aggregate, payable under this Policy.

4.22 Loss prevention services

loss prevention services mean the reasonable and necessary fees, costs and expenses incurred in relation to the *insured's* retention of a third party to perform or provide the following:

- 4.22.1 legal compliance audits of the *insured's* human resources practices and policies, including development or review of employee handbooks, employment applications, harassment policies, affirmative action plans and policies regarding hiring, retention, promotion, discipline and discharge of *employees*;
- 4.22.2 training programs on employment issues; or
- 4.22.3 advice or counselling on matters that have the potential to give rise to a *claim*.

4.23 Mass / Class / Collective / Multi-Party Litigation

mass / class / collective / multi-party litigation means any *financial loss* with respect to threatened, purported, certified or decertified class actions, or any *claim* brought on behalf of five (5) or more plaintiffs or claimants.

4.24 Mental anguish

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

4.25 Non-Indemnified financial loss

non-indemnified financial loss means the *financial loss* incurred by an *insured person* for which the *company* is neither permitted nor required by law to indemnify or for which the *company* fails to indemnify due to the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the *company*, or the *company* becoming a debtor in possession.

4.26 Official body

official body means any regulator, government body, government agency, parliamentary commission, official trade body or similar body that has the legal authority to regulate, control, supervise, conduct *employment related investigations*, perform audits, assess and levy fines and penalties, issue orders or directives, or to undertake other actions or measures, as well as, any other public or administrative agency or self-regulatory body that is empowered by statute or statutory regulation to perform the above functions into the affairs of the *company* or an *insured person*, including but not limited to the Equal Employment Opportunity Commission of the United States of America (EEOC) or the Equal Opportunities Commission (EOC) of the United Kingdom, or any governmental body empowered to enforce applicable employment laws.

4.27 Period of insurance

period of insurance means the period of time specified in the *schedule* to this Policy including any coverage extension thereto agreed in writing by us.

4.28 Personal information

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

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

4.29 Policyholder

policyholder means the organisation designated in the *schedule*.

4.30 Privacy event

privacy event means an actual or alleged:

4.30.1 unauthorised access, disclosure, loss or theft of:

(a) *personal information* in the care, custody or control of any *insured*; or

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

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

4.30.3 unauthorised or wrongful collection of *personal information*.

4.31 Privacy regulation

privacy regulation means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of personally identifiable financial, medical or other sensitive information, or any other legislation, regulation or by-law associated with identity theft or privacy.

4.32 Property damage

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

4.33 Proposal

proposal means any information and/or statements or materials supplied to us, including any application form completed and signed by the *policyholder* and any attachments thereto.

4.34 Public relations expenses

public relations expenses mean reasonable and necessary fees and expenses incurred by any public relations, crisis management or law firm retained by the *company* to plan, implement, execute and manage a public relations campaign to counter or minimize any actual or anticipated adverse effects of negative publicity or to protect or restore the *company's* business reputation in response to negative publicity. Solely with respect to a *workplace violence event*, *public relations expenses* shall include the reasonable and necessary expense of an emotional counselling seminar for *insured persons* conducted by an independent consultant following the *workplace violence event*.

4.35 Responsible Officer

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

4.36 Retention

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

4.37 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.

4.38 Security event

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

- 4.38.1 an actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *company's* computer system; or
- 4.38.2 the theft, alteration, modification, corruption or destruction of corporate information in the care, custody or control of any *insured* that is not available or known to the public.

4.39 Sub-Limit of liability

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

4.40 Subsidiary

subsidiary means any entity or organisation, including any joint venture or partnership, in which on or before the inception date of this Policy (or for the purpose of Section 3.2 'New Subsidiaries', during the *period of insurance*), the *policyholder*, directly or indirectly through one or more *subsidiary*:

- 4.40.1 controls the composition of the board of directors, or has the right to elect or appoint a majority of the board of directors (or equivalent in any other country);
- 4.40.2 controls more than 50% of the shareholder or equity voting rights; or
- 4.40.3 holds more than 50% of the issued share capital or equity.

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

- (a) *wrongful acts* committed; or
- (b) *employment related investigation, extradition claim, workplace violence event* which occurred, commenced or arose,

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

4.41 Workplace violence event

workplace violence event means any actual or alleged intentional and unlawful use of, or threat to use, deadly force with an intent to cause harm at the *company's* premises that results in the publication or broadcast of information which can reasonably be expected to damage the *company's* reputation, other than: (i) war, invasion, insurrection, riot, rebellion, revolution, civil war, or military action; or (ii) the use or threat of force or violence for the purpose of demanding money, securities or property.

4.42 Wrongful act

wrongful act means any act, error, omission, misstatement, misleading statement, neglect, or breach of duty actually or allegedly committed or attempted by the *company* or by one or more *insured persons* in their capacities as such, in connection with any actual or alleged violation of any law or public policy concerning *discrimination* or *harassment*.

4.43 Wrongful employment act

wrongful employment act means any employment-related act, error, omission, misstatement, misleading statement, neglect, or breach of duty actually or allegedly committed or attempted by the *company* or by one or more *insured persons* in their capacities as such, in connection with any actual or alleged:

- 4.43.1 breach of any oral or implied employment contract;
- 4.43.2 *discrimination*;
- 4.43.4 retaliation (including retaliation for whistle blowing);

- 4.43.5 personal grievance including without limitation wrongful termination, failure or refusal to hire or promote; wrongful discipline; wrongful reference, deprivation of a career opportunity, demotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; workplace harassment including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications; negligent hiring, retention, supervision, training or performance evaluation, misrepresentation, defamation, invasion of privacy or infliction of emotional distress; and
- 4.43.6 breach, violation or non-compliance with applicable data protection laws in any jurisdiction's federal, state or local statute or regulations governing the information collection, handling, maintaining, use and access to information in employee recruitment, selection, monitoring at work and employment record keeping.

5. Exclusions

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

5.1 Bodily injury / Property damage

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

- 5.1.1 *mental anguish* or emotional distress arising from a *wrongful act*;
- 5.1.2 *financial loss* covered under Extension 2.5 'Public Relations Expenses'; or
- 5.1.3 *defence costs* and/or *employee related investigation costs*.

5.2 Assumed Liability, Guarantee, Warranty

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

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

5.3 Conduct

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

- 5.3.1 an *insured* gaining any profit, remuneration or financial or non-financial benefit or advantage to which such Insured was not legally entitled; or
- 5.3.2 any *wrongful act* which was deliberately committed;
- 5.3.3 the committing of any criminal, dishonest, fraudulent or malicious by an *insured*; or
- 5.3.4 any knowing or wilful violation or breach of any statute, regulation or law by an *insured*,

where the conduct referred to in clauses 5.3.1 to 5.3.4 above is determined by:

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

Until such admission or determination, *defence costs* shall be advanced by us pursuant to Section 6.2. Furthermore, the conduct referred to in clauses 5.3.1 to 5.3.4 committed by any *company* shall not be attributed to any *insured person* unless such *insured person* was complicit in such conduct.

5.4 Prior and pending claims and notifications

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

- 5.4.1 any civil, criminal, administrative, regulatory, arbitration, mediation proceeding or *claim* initiated or commenced against an *insured* prior to or pending at the applicable Prior and Pending Date as specified in the *schedule* or alleging or deriving from the same or essentially the same facts as alleged in such actions; or
- 5.4.2 facts alleged or the same or related *wrongful act(s)* or *interrelated wrongful acts* alleged or contained in any *claim*, circumstance or other matter that has been reported or notified and accepted in part or in full under any policy existing or expired before or on the inception date of this Policy.

5.5 Specific act exclusions

arising out of, based upon, in connection with, attributable to or as a consequence of any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state or local acts, rules or regulations, statutory or common law or amendments thereto anywhere in the world governing:

- 5.5.1 retirement benefits, occupational pension schemes or *employee benefit plans*, including, but not limited to the United States Employee Retirement Income Security Act of 1974 (ERISA; except Section 510 (29 U.S.C. Section 1140) thereof) or equivalent in any other jurisdiction;
- 5.5.2 wage and hour practices, off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to timely pay wages, conversions, unjust enrichment, minimum wage, or unfair business practices, including, but not limited to the United States Fair Labor Standards Act of 1938 (FLSA; except the Equal Pay Act) or equivalent in any other jurisdiction;
- 5.5.3 the information and consultation of employees through representatives, the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including but not limited to the United States National Labor Relations Act (NLRA) or the United Kingdom Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), or equivalent in any other jurisdiction;
- 5.5.4 any amount payable in respect of contractual or statutory notice periods and/or any amount which would not have been made but for the *insured's* failure to give an *employee* contractual notice of dismissal required under his or her contract of employment or payment in lieu thereof (including but not limited to termination indemnities and social security or insurance obligations triggered by a failure to honour statutory and/or contractual notice requirements), including, but not limited to the United States Worker Adjustment and Retraining Notification Act of 1988 (WARN), or equivalent in any other jurisdiction;
- 5.5.5 occupational health and safety, work-related injuries, illnesses, and occupational fatality;
- 5.5.6 workers' compensation, health insurance coverage, employer's liability, unemployment insurance, social security, disability benefits;
- 5.5.7 racketeering, including, but not limited to the United States Racketeer Influenced and Corrupt Organizations Act (RICO) or equivalent in any other jurisdiction; or
- 5.5.8 false claims in connection with government spending, including, but not limited to the United States False Claims Act or equivalent in any other jurisdiction.

However, this Exclusion 5.5 shall not apply to any *claim* for any actual or alleged retaliatory treatment of the claimant by the *insureds* on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulation.

6. Notification, Defence, Settlement and Indemnification

6.1 Notification of Claims or Circumstances

6.1.1 We shall only be liable under this Policy for *claims* that have been reported to us in writing as soon as reasonably practicable after a *responsible officer* first becomes aware of such *claim* but no later than thirty (30) days after the expiry of the *period of insurance* or within the *extended reporting period* (if applicable).

Written notice under this section shall include, but not be limited to, a description of the *claim*, the nature of the alleged or potential *financial loss*, the details of the actual or potential claimants, and the date and manner in which the *insured* first became aware of the *claim* as defined in Definition 4.3.

6.1.2 If during the *period of insurance* or the *extended reporting period* any *insured* shall become aware of any actual or alleged *wrongful act* or other circumstance which may reasonably be expected to give rise to a *claim*, they shall promptly give written notice to us of such *wrongful act* or circumstance.

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

If such notices is accepted by us, any *claim* which is subsequently made against such *insured* and reported to us which alleges, arises out of, or is based upon or attributable to such *wrongful act* or circumstance which is the same as or related to any *wrongful act* or circumstance contained in that notices, shall be considered made at the time such notice of those circumstances was accepted by us and such *claim* shall be subject to the terms, conditions and remaining *limits of liability*, if any, of this Policy.

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

- (a) the *insured* shall notify the circumstance to us as set out in clauses 6.1.2 above; and
- (b) the *insured* shall advise us of the existence of the non-disclosure agreement and provide full disclosure of relevant information as permitted by an *official body* within thirty (30) days from being allowed to make such disclosure by the *official body*; and
- (c) the *insured* shall always keep us informed as set out in clauses 6.1.1 and 6.1.2 to the fullest extent permitted by the *official body* during this disclosure limitation and afterwards provide full details as requested by the Insurer once this limitation is removed.

6.1.4 Written notice hereunder shall be given to us at the address specified in the *schedule* and shall be effective from the date of receipt at such address.

6.1.5 The details of any other insurance policy which may apply to any *financial loss* covered under this Policy shall be reported to us within a reasonable time of any *claim* notification.

6.2 Defence and Settlements, Cooperation and Defence costs

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

6.2.2 It shall be condition precedent to cover under this Policy that the *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *financial loss* (even when such *financial loss* is within the *retention*) without our prior consent, except as provided under Extension 2.6 'Emergency Costs' and subject to section 6.4 below. Only those settlements, consent judgments, *defence costs*, or other *financial loss* that have been consented by us shall erode the *retention* and/or shall be recoverable under the terms of this Policy. Where our consent is required under this Policy (including for the incurring of reasonable and necessary fees, costs and expenses under an applicable Extension) such consent will not be unreasonably withheld or delayed.

- 6.2.3 Each *insured* will, at their own cost (unless otherwise agreed by us or expressly provided for in this Policy):
- (a) take all reasonable steps to prevent or minimise a *financial loss*; and
 - (b) render all reasonable assistance to and cooperate with us in the defence of any *claim* and the assertion or indemnification and contribution rights; and
 - (c) give all information and assistance us as it may reasonably require enabling it to investigate any matter under which the *insured* seeks coverage under this Policy or to determine our liability under this Policy.
- 6.2.4 Except to the extent that we have denied coverage, and subject to the *limit of liability, sub-limit of liability, excess limit of liability* and *retention*, we shall advance *defence costs* as and when incurred by the *insured*, in respect of any *claim* prior to the final resolution of such *claim*.
- 6.2.5 We may require, at our sole discretion, that the *insured's* liability alleged in a *claim* be determined in a judgment or other final, non-appealable adjudication or proceeding.
- 6.2.6 Any payments of *financial loss* to any *insured* that have been made by us shall be repaid to us by the person and/or entity (jointly or severally) to whom or on whose behalf such payments have been made in the event that any such payments are ultimately determined not to be covered by this Policy and/or such person or entity is ultimately determined not to be entitled under this Policy to the payment of such *financial loss*.

6.3 Duty to defend

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

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

6.4 Emergency costs

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

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

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

6.5 Single Claims / Interrelated Acts or Events

All *claims* arising out of the same:

- 6.5.1 *wrongful act* or *interrelated wrongful acts*; or
- 6.5.2 facts, acts or events,

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

6.6 Allocation

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

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

If we and the *insured* cannot agree on allocation in accordance with this section, then all such parties hereby agree to refer to the determination of the Dispute Resolution proceeding stated in General Condition 7.7 Dispute Resolution.

7. General Conditions

7.1 Aggregate Limit of Liability

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

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

The *sub-limits of liability* form part of, and are not in addition to, the *limit of liability*. Where more than one *sub-limits of liability* applies to any *financial loss* payable under the terms of this Policy, only one *sub-limits of liability* shall apply, being the greater of such *sub-limits of liability*.

The *limit of liability* or the *sub-limits of liability* shall apply only in excess of the applicable *retention*.

The *limit of liability* for any *extended reporting period* shall be part of, and not in addition to the *limit of liability* for the *period of insurance*.

7.2 Application of Retention

We shall only pay that amount of *financial loss* in respect of each *claim* or other costs, expenses or amounts set out in Section 2. Extensions and, that is in excess of the applicable *retention* as specified in the *schedule*.

However, no *retention* shall apply to:

- (a) the *non-indemnified financial loss* of an *insured person*; or
- (b) cover afforded under Extension 2.5 'Public Relations Expenses',

as specified in the *schedule*.

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

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

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

7.3 Authorisation clause and Assignment

By acceptance of this Policy the *policyholder* agrees to act on behalf of each *insured* with respect to giving and receiving notices of *financial loss* or circumstances, cancellation or other communication to us, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy; and each *insured* agrees that the *policyholder* shall act on their behalf.

Neither this Policy nor any rights hereunder may be assigned without our prior consent.

7.4 Bankruptcy

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

7.5 Cancellation

This Policy may not be cancelled by us except for non-payment of premium. If the *policyholder* cancels the Policy, a refund of premium will be allowed pro rata of the premium for the unexpired *period of insurance*.

In the event there are any notified, reserved or paid circumstances or *claims* under this Policy, the *policyholder* will have the right to cancel this Policy, but without the right to a return of premium, and the entire premium will be deemed fully earned, unless the *policyholder* withdraws such circumstances or *claims* and reimburses us for any payments made under this Policy.

This Policy may not be cancelled by the *policyholder* during the *extended reporting period*, once elected.

7.6 Currency

All premiums, *limit of liability*, *retentions*, *financial loss* and other amounts under this Policy are expressed and payable in the currency specified in the *schedule*. If judgment is rendered, settlement is denominated or another element of *financial loss* under this Policy is stated in a currency other than this currency, payment of covered *financial loss* due under this Policy (subject to the terms, conditions, exclusions and limitations of this Policy) will be made either in such other currency at our option, or in the currency specified in the *schedule*, at the rate of exchange published in accordance with the Reserve Bank of New Zealand at the date the *financial loss* is to be paid.

7.7 Dispute resolution

The *insured* and Zurich shall submit any dispute arising out of or relating to this Policy to a binding arbitration proceeding as described in this Section (hereinafter 'ADR Proceeding'). The seat of the ADR Proceeding shall be in Auckland, New Zealand. Either the *company* or Zurich may initiate the ADR Proceeding process by sending written notice to the other party.

Unless otherwise agreed by the parties, any such binding arbitration shall be governed by the Resolution Rules of the New Zealand International Arbitration Centre. In any such arbitration, the *insured* collectively and Zurich shall each select an independent arbitrator, and those two arbitrators shall select a third independent arbitrator. A decision by a majority of the three arbitrators shall be final and binding upon all *insureds* and Zurich. The parties to the ADR Proceeding process shall share equally the fees and expenses of the third-appointed arbitrator as well as other common expenses of the ADR Proceeding process, although each party shall pay the fees and expenses of such party's appointed arbitrator.

7.8 Fraudulent claims

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

7.9 Other insurance

If a *financial loss* covered under this Policy is also covered, wholly or partially, by any other valid and collectable insurance policy, this Policy shall only apply and pay *financial loss* in excess of the amount paid by such other insurance policy, and irrespective of whether such other insurance policy is stated to be primary, contributory, excess, contingent or otherwise. As excess insurance this Policy shall not apply or contribute to the payment of any *financial loss* until the insured limits and retentions amounts of that other insurance policy have been exhausted.

7.10 Policy Interpretation and Jurisdiction

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

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

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

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

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

7.11 Representations, Severability and Non-Rescission of the policy

- 7.11.1 This Policy is issued in reliance upon the truth and completeness of the declarations, agreements, representations and warranties made in the written *proposal*. Such declarations, agreements, representations and warranties are the basis of this Policy and are incorporated into and constituting a part of this Policy.
- 7.11.2 The *responsible officers* represent, warrant and acknowledge that the declarations, agreements, representations and warranties in the written *proposal* for this Policy are true and complete.
- 7.11.3 The *proposal* shall be construed as a separate proposal by each *insured person* and with respect to declarations, statements and information of the *proposal*:
 - (a) no statement made by any *insured person* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*) possessed by any *insured person* shall be imputed to any *insured persons* for the purpose of determining the availability of cover under this Policy; and
 - (b) the statements in the *proposal* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*), possessed by any past, present or future *responsible officer* of the *company* shall be imputed to that *company*, and the knowledge of the same officers of the *policyholder* shall be imputed to all *companies*.
- 7.11.4 We further agree that we shall not seek to rescind or avoid, or apply other legal remedy in relation to this Policy, or any severable part of this Policy, where our remedy of rescission or avoidance arises solely as a result of innocent or negligent non-disclosure or innocent or negligent misrepresentation by a *responsible officer*. However, in the event that such written *proposal* contains misrepresentations or omissions made with the intent to deceive or which materially affect either the acceptance of the risk or the hazard assumed by us under the Policy, then coverage shall be void ab initio as to:
 - (a) any *insured person* who knew of such misrepresentations or omissions (whether or not such individual knew such *proposal* contained such misrepresentations or omissions); or
 - (b) any *insured* if any *responsible officer* or signor of the *proposal* knew of such misrepresentations or omissions.

7.12 Subrogation and Recoveries

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

The rights and obligations under this clause also apply in respect of any payment of *financial loss* by us in connection with a *claim* which would have been excluded pursuant to Exclusion 5.11 'Prior and Pending Claims or Notifications' had a valid notification to another policy existing or expired before or on the inception date of this Policy been accepted.

We shall be entitled to pursue and enforce all rights in the name of any *insured* who shall provide all reasonable assistance and co-operation to us in the prosecution of such rights. Furthermore, each *insured* shall take all steps necessary or required by us, whether before or after payment by us, to preserve and secure such rights, including any remedies that the *insured* may have to recover our *financial loss*, costs or expenses from any third party, or the execution of any documents necessary to enable us effectively to bring suit in the name of the *insured*, whether such acts shall be or become necessary before or after payment by us.

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

7.13 Sanctions regulation

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

7.14 Territorial Scope of Cover

Cover under this Policy shall apply to:

7.14.1 *financial loss* incurred;

7.14.2 *claims* made; and

7.14.3 *wrongful acts*,

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

7.15 Goods and Services Tax

All *limits of liability* in this Policy (except for the *retention*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to *claim* payments. However, this does not apply to the *retention* which is GST inclusive.

7.16 Waiver of Privilege

If we instruct any lawyer to investigate or defend any claim against any *company*, you authorise the lawyer to provide us any documents, information or advice in respect of the *financial loss*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect. We agree to keep any documents, information or advice in respect of the *financial loss* confidential, and not to take steps to waive privilege over them.

Zurich Australian Insurance Limited

(incorporated in Australia)

Trading as Zurich New Zealand

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