Important

Statutory Notice – Section 40 Insurance Contracts Act

This notice is provided in connection with but does not form part of the policy.

This policy is a ‘Claims Made’ liability insurance policy. 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 retroactive date 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 when the policy is in force, of any occurrence or fact 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 occurrence or facts 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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Our Agreement

Subject to payment of the premium set out in the schedule, Zurich agrees with the insured persons and the company to provide insurance in accordance with the Zurich Aged Care – General Terms and Conditions and the terms, conditions and limitations of this policy.

In issuing this policy, we have relied on the information contained in the proposal form and or any other information given by or on the insured’s behalf.

Insuring Clauses

1. Directors and Officers liability
   We will pay on behalf of any insured person, financial loss arising from any claim first made against any insured person during the period of insurance or the extended reporting period (if applicable) by reason of a wrongful act, to the extent that such insured person is not permitted or required to be indemnified by the company.

2. Company reimbursement
   We will pay on behalf of the company, financial loss arising from any claim first made against any insured person during the period of insurance or the extended reporting period (if applicable) by reason of a wrongful act, but only to the extent that the company is permitted or required to indemnify such insured person.

3. Company entity liability
   We agree to pay to or on behalf of the company any loss arising out a claim first made against the company during the period of insurance or any extended reporting period (if applicable) by reason of a wrongful act by the company.

4. Employment practices
   We will pay on behalf of the company any financial loss in respect of an employment entity claim, which is brought and maintained against the company.

Limit of Liability

Unless expressly stated otherwise, the limit of liability is the total limit of our liability, under or in connection with this policy, in respect of financial loss arising out of any one claim and of all claims in the period of insurance. This is inclusive of defence costs, payment of which by us reduces such limit of liability. The limit of liability is also inclusive of any loss or costs and expenses for which this policy otherwise provides indemnity to the insured. Any applicable sub-limit is part of, and shall not increase, the limit of liability unless expressly stated otherwise.

We shall be liable only for the amount of any financial loss (including defence costs) that exceeds the applicable deductible specified in the schedule and such deductible amount shall be borne by the insured uninsured and at the insured’s own risk. The deductible is not part of our liability for any financial loss.

Where we make a payment in relation to a claim which includes payment of part or all of the deductible, the insured shall within 30 days of being notified by us, reimburse us the amount of the deductible we paid.

Where, within the aggregate limit of liability as stated in the schedule, cover is provided for a financial loss under one or more Insuring Clauses, the higher limit of liability applicable to those Insuring Clauses shall apply and cover shall only be available to the insured under that Insuring Clause. The deductible applicable to that Insuring Clause shall apply.

All claims arising directly or indirectly out of or in connection with the same source or originating cause, or related sources or originating causes, shall be considered to constitute a single claim, for the purposes of the limit of liability, any sub-limit of liability and the applicable deductible. Our aggregate liability for financial loss or financial losses sustained by any or all persons, companies or other entities forming part of the insured shall not exceed the amount for which we would be liable if all financial losses were sustained by any one of the persons, companies or other entities forming part of the insured.
Definitions

For the purposes of this policy:

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.

Bodily Injury

bodily injury means mental or emotional distress, bodily injury, sickness, disease or death of any person including any consequential loss resulting therefrom.

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;

(b) a trustee in bankruptcy, receiver, liquidator, administrator, conservator, rehabilitator (or similar official or person) is appointed for the policyholder.

Civil or Bail bond expenses

civil or bail bond expenses means a fee or premium (and only those that are available at reasonable commercial rate) necessary to obtain such a bond or other similar form of guarantee for the period of no more than 12 months, 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.

Claim

claim means:

(a) a written demand for compensation, monetary damages or non-monetary relief;

(b) a civil proceeding, suit or counter-claim commenced by the service of a court or similar pleading;

(c) a formal notice of a criminal proceeding or an extradition proceeding;

(d) a formal notice of an arbitration or mediation proceeding;

(e) a formal administrative or regulatory proceeding commenced by the service on any insured of a notice of charges, formal investigative order or similar document against any insured person;

(f) a formal criminal, administrative or regulatory investigation, hearing or inquiry, commenced by any regulator, government body, government agency, official body or trade body of an insured person once such insured person is identified in writing by such investigating authority as a person against whom a criminal, administrative or regulatory proceeding may be commenced.

An investigation, hearing or inquiry as described in this paragraph(s), shall be deemed to be first made when the insured person is first so identified or so served; or

(g) any request to extend the operation of or waive any statute of limitations or contractual time-bar.

The term ‘claim’ shall include with respect of Insuring Clause 4 an employment claim.

Clean up costs

clean up costs mean 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); and

(c) any foundation or charitable trust solely controlled or sponsored by the policyholder or any subsidiary thereof, provided that this definition shall not include any pension or superannuation fund, trust or scheme.
Consensual claim

Consensual claim means any claim which is brought with the solicitation, intervention, participation or assistance of an insured against whom it is brought, except where an insured is compelled by law to assist or participate in such claim.

Corporate manslaughter proceeding

Corporate manslaughter proceeding means a formal criminal proceeding against a director or officer of the company 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.

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 Insuring Clauses 3 and 4, the date specified in the schedule.

Deductible

deductible means the amounts stated in the schedule that shall be the responsibility of the company, as applicable, to pay in respect of each claim under the policy for financial loss.

Defence costs

defence costs are part of financial loss and shall mean 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, in the investigation, defence, adjustment, settlement or appeal of any claim made or brought against an applicable 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.

Director or officer

director or officer means:

(a) any natural person who is a past, present or future director, officer, senior manager, management committee member, member of the board of managers, trustee or governor of the company duly elected or appointed pursuant to the laws and the by-laws (or equivalent in any other country);

(b) any natural person who is a de facto director or officer or shadow director of the company;

(c) any natural person who is a 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 (a) to (c) above, who is or was a member of the company’s internal audit committee, internal compensation committee, or any other internal committee of and for the company; or

(e) any employee of the company who is the 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 while in the regular service of the company in the ordinary course of the company’s business and whom the company compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service.

The definition of employee shall not include independent contractors or independent agents.

Employment entity claim

employment entity claim means a claim which is brought and maintained by or on behalf of any past, present, future or prospective employee of the company against the company, based on any actual or alleged wrongful dismissal, discharge or termination of employment, employment related misrepresentation, violation of employment discrimination laws (including workplace harassment), wrongful failure to promote, wrongful discipline, wrongful deprivation of a career opportunity, negligent evaluation, invasion of privacy, employment related defamation or employment related infliction of emotional distress.
Extended reporting period
extended reporting period means the relevant period of cover arising or offered under Extension of Cover 8. ‘Extended reporting period’ and/or Extension of Cover 20. ‘Retired directors and officers’.

Extradition costs
extradition costs means reasonable legal fees, costs and expenses incurred by an insured person with our prior consent to obtain legal advice or bring or defend proceedings including by way of judicial review in respect of a formal request, claim, warrant for arrest or other proceedings for extradition.

Financial institution
financial institution means any bank including any merchant or investment bank, finance company, 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 amounts that any applicable insured becomes legally liable to pay, including:

(a) damages (including pre and post judgment interest and plaintiff’s legal fees awarded on a covered judgment), including the multiplied portion of any damages award, punitive, exemplary or aggravated damages and compensation orders;
(b) defence costs;
(c) investigation costs;
(d) public relation expenses;
(e) pecuniary penalties under Extension of Cover 16. ‘Pecuniary penalties’;
(f) prosecution costs;
(g) civil and bail bond expenses; and
(h) extradition costs.

Financial loss (other than defence costs) does not include taxes, social security contributions, fines or penalties imposed by law (other than those covered Extension of Cover 16. ‘Pecuniary penalties’) or any amounts that are uninsurable at law, or clean up costs.

The question of whether any financial loss is insurable shall be governed by such applicable law that most favours coverage for such punitive, exemplary, aggravated and multiple damages, provided that such applicable law has a substantial connection or relationship to the relevant insured or to the claim giving rise to such liability.

Notwithstanding the foregoing clauses, in relation to employment entity claims, financial loss specifically excludes punitive, exemplary, aggravated and multiple damages awards.

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, other than a director or officer, in such capacity on behalf of the company including whilst acting as a lawyer on behalf of the company in the events giving rise to claims, but only if and as long as such claim is also made, and is continuously maintained, against a director or officer.

(e) for the purpose of Extension of Cover 12. ‘Marital estates’ only and no other, any lawful spouse or domestic partner of a person as defined in Definitions of insured (a) and (a) to (d) above; and

(f) for the purpose of Extension of Cover 6. ‘Estates, heirs legal representatives’ only and no other, any estate, heir or legal representative of a person as defined in Definitions of insured (a) and (a) to (d) above.

Insured persons shall not include any independent agent, independent contractor, independent legal or other advisor, independent consultant, external auditor, or compulsory liquidator, administrator or receiver of the company.
Investigation

investigation means any formal criminal, administrative or regulatory investigation, hearing or inquiry, commenced by any official body into the affairs of the company or outside entity, or the conduct of an insured person in that capacity.

It does not include any investigation, hearing or inquiry 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 its territories or possessions, including but not limited to any investigation, hearing or inquiry brought by or commenced by the United States Securities and Exchange Commission (SEC).

Investigation costs

investigation costs are part of financial loss and shall mean reasonable and necessary 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 an insured person directly in connection with such insured person preparing for and attending an investigation.

Joint venture

joint venture means any unincorporated enterprise undertaken jointly by the company with any third party.

Limit of Liability

limit of liability means the amount specified in the schedule which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms and conditions of this policy.

Non-Executive Director Excess Limit of Liability

non-executive director excess limit of liability means the Limit of Liability as specified in the schedule in respect of each non-executive director under Extension of Cover 7. ‘Excess limit of liability for non-executive directors’.

The ‘Non-Executive Director Excess Limit of Liability’ shall be a separate limit of liability for each non-executive director and applicable only to that non-executive director.

The non-executive director excess aggregate limit of liability specified in the schedule is the maximum amount payable by us for all non-executive directors’ claims and investigations in the aggregate under Extension of Cover 7. ‘Excess limit of liability for non-executive directors’.

Non-Executive Director

non-executive director means any natural person serving as a director of the policyholder at the inception of the period of insurance who is not also an officer or employee of the company, including serving as an outside entity executive.

The term non-executive director shall also include any natural person who begins serving as a non-executive director of the policyholder during the period of insurance, including serving as an outside entity executive.

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 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.

However it does not include any investigation in whole or in part:

(a) within the jurisdiction of; or

(b) pursuant to the laws of, the United States of America, or its territories or possessions, including but not limited to by the United States Securities and Exchange Commission (SEC).

Outside entity

outside entity means:

(a) any non-profit organisation; or

(b) any for-profit entity in which the company has at least a 1%, but no greater than 50%, equity ownership interest, but excluding any:

(i) subsidiary;

(ii) financial institution;

(iii) 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

(iv) any entity that has negative net assets at the time of inception 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 whilst 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 knowledge and consent or request.

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.

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

Pollution
pollution means:

(a) the actual, alleged or threatened generation, transportation, discharge, emission, dispersal, release, escape, treatment, storage or disposal of pollutants; or

(b) any governmental regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants or any action taken in contemplation or anticipation of any such regulation, order, direction or request, or any voluntary decision to do so.

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 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 an 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.

Proposal
proposal means any information and/or statements or materials requested by us, or supplied to us by or on behalf of the company or any insured person (either before or during the period of insurance), any proposal form completed and signed by the policyholder for this policy and any previous policy issued by us for which this policy is a replacement or renewal (including any attachments thereto, information included therewith or incorporated therein), and the financial statements and annual reports of the company.

Prosecution costs
prosecution costs means the reasonable legal costs and expenses incurred by an insured person with our written consent in taking legal proceedings under Extension of Cover 19. ‘Prosecution costs’.

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 in the reasonable exercise of his/her discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of a claim.

Shadow director
shadow director means any natural person who is deemed to be a shadow director of any company by any applicable legislation or law.

Sub-limit
sub-limit of liability 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.

Subsidiary
subsidiary means any company or other legal entity over which the institution is in a position to exercise effective direction or control through ownership or control of more than 50% of the issued voting shares of such entity and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the policyholder pursuant to the Corporations Law (Cth) or the applicable Australian accounting standard.
Third party
third party means any person or entity other than an insured.

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 their territories and/or possessions.

Wrongful act
wrongful act means for purposes of:
(a) Insuring Clauses 1 and 2: actual, alleged or attempted breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, libel, slander, misstatement, misleading statement, or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by an insured person, individually or otherwise, in the course of the duties of that insured person with the company or any organisation to which the Extension of Cover 15. ‘Outside entity executive’ applies, after the retroactive date, if applicable.
(b) Insuring Clauses 3: actual, alleged or attempted breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, libel, slander, misstatement, misleading statement, or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by the company in the course of undertaking its business. It does not include conduct as a trustee.
(c) Insuring Clause 4: an employment entity claim.

Extensions of Cover
Cover is automatically provided for the Extensions of Cover described below. 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)
Unless or until we have denied indemnity in respect of a claim or investigation and prior to final adjudication of the claim, we will advance the following as they are incurred by an applicable insured:
(a) defence costs;
(b) investigation costs;
(c) prosecution costs;
(d) civil and bail bond expenses;
(e) public relations expenses; and
(f) extradition costs.
We will not rely on Exclusion 2. ‘Conduct’ to deny indemnity or to refuse to advance financial loss under this Extension of Cover until the conduct in question has been finally established by written admission, 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 insured 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 above, the sub-limit is 10% of the limit of liability for all claims by all insured in the aggregate.
Any advance payments to an insured that have been made by us shall be repaid by the person or entity to whom such payments have been made in the event that any such person or entity shall not be entitled under this policy to the payment of such financial loss.
2. 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 policy including but not limited to an extradition proceeding.

The sub-limit for this Extension of Cover is the amount specified in the schedule for all civil or bail bond expenses for all insured persons.

It is part of and is not in addition to the limit of liability.

3. Continuous cover
Notwithstanding Exclusion 11. (c), ‘Prior and pending’ we will pay financial loss arising from any claim first made against the insured during the period of insurance arising from a prior known fact.

Provided that:
(a) the insured has maintained without interruption, directors and officers liability insurance with an insurer from the date of continuous cover to the present date;
(b) the insured would have been indemnified under the directors and officers liability insurance policy in force at the relevant time if the prior known fact had been notified to the applicable insurer when the insured first became aware of it; and
(c) 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
(d) there has been no fraudulent non-disclosure or misrepresentation to us in respect of the prior known fact; and
(e) 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.

4. Crisis containment
We will agree to pay public relations expenses to or on behalf of an insured person in respect of any claim against an insured person first made during the period of insurance and any investigation for which the insured person is entitled to cover for investigation costs.

The sub-limit for this Extension of Cover is the amount specified in the schedule for all public relations expenses for all insured persons.

It is part of and is not in addition to the limit of liability.

5. Employment claims
This policy covers employment claim against insured persons including in their capacity as outside entity executives.

6. Estates, heirs, legal representatives
This policy covers financial 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.

7. Excess limit of liability for non-executive directors
In addition to the limit of liability, we will pay all financial loss on behalf of any non-executive director in accordance with Extension of Cover 8. ‘Extended reporting period’ (a) to Insuring Clause 1 and Extension of Cover 10. ‘Investigations’, on the following terms:
(a) (i) the financial loss is otherwise covered by the policy; and
(ii) our obligation 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 policy;
(ii) the limit of liability of all other applicable directors and officers or management liability or indemnity insurance policies written as specific excess policies over this policy;
(iii) any other policy entered into by or effected on behalf of the non-executive director or under which the non-executive director is a beneficiary; and

(iv) all other indemnification for financial loss available to the non-executive director.

(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 7. ‘Excess limit of liability for non-executive directors’ (b);

(d) the limit of liability for cover under this Extension of Cover for each non-executive director for all claims and investigations shall be the non-executive director excess limit of liability specified in the schedule. The non-executive director excess aggregate limit of liability specified in the schedule is the maximum amount payable by us for all non-executive directors, claims and investigations in the aggregate under this Extension of Cover.

8. 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; and

(ii) any investigation where the legal requirement on the insured person to attend first arises during such 90 day period,

but only with respect to any wrongful act or conduct allegedly committed prior to the expiry date of the period of insurance or the effective date of the change in control.

(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:

(v) any claim made against any insured during the selected extended reporting period; or

(vi) any investigation where the legal requirement on the insured person to attend first arises during such selected extended reporting period,

but only with respect to any wrongful act or conduct allegedly committed prior to the expiry date of the period of insurance or the effective date of the change in control.

Extension of Cover 8. ‘Extended reporting period’ (b) is subject to such terms and conditions we may decide. Further and subject to Extension of Cover 8. ‘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 Extension of Cover 8. ‘Extended reporting period’ (a) above.

(c) The rights contained in Extension of Cover 8. ‘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 change in control, of its intention to elect an extended reporting period described above; and

(ii) unless as a condition precedent to the extended cover under Extension of Cover 8. ‘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;

(iii) immediately upon the effective date of any directors and officers or management 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 Extension of Cover 8. ‘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.

9. Extradition costs
We agree to pay to or on behalf of:

(a) an insured person extradition costs (where permitted by law) in respect of a claim covered under this policy;

(b) an insured person the reasonable fees incurred by such insured person, with our prior written consent, of a counsellor or tax adviser in respect of a covered claim which is an extradition proceeding; and

(c) the lawful spouse or domestic partner of an insured person in Extension of Cover 9. ‘Extradition costs’ (a) the reasonable travel, accommodation and living-away-from-home expenses in attending any hearing of such extradition proceeding against that insured person.

The sub-limit for all fees and expenses for claims under Extension of Cover 9. ‘Extradition costs’ (b) and (c) is 10% of the limit of liability.

10. Investigations
We will pay on behalf of any director or officer such investigation costs in respect of any investigation by any official body into the affairs of the company or outside entity or the conduct of an insured person in such capacity, whether or not a wrongful act is alleged against such insured person.

Indemnity under this Extension of Cover arises only when, and is in relation only to investigation costs incurred after, such director or officer is legally required in writing by such official body to attend such investigation, provided that such legal requirement to attend first arises during the period of insurance and the insured notifies us in accordance with Condition 6. ‘Notification’. This Extension of Cover shall not apply to general industry investigations, hearings 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.

11. Joint venture
This policy provides cover in respect of any claim made against an insured person arising from any joint venture, but such coverage does not extend to any claim brought by or on behalf of any joint venture party(ies) or any vehicle established to conduct, control or manage such joint venture.

12. Marital estates
This policy will cover such financial 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 and made solely against such persons or the estate in his or her respective capacity as the spouse or domestic partner of any insured person.

The cover provided by this Extension of Cover is limited to financial 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.

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

13. Non-Disclosure and Misrepresentation waiver
Where we have any rights in respect of non-disclosure or misrepresentation we agree not to exercise them, including not to avoid this policy. However, in respect of any non-disclosure or misrepresentation, the insured agrees that we are 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;
However, other than in the case of an entity executive who is an officer, director or non-manager of the company, cover shall cease after 90 days from the date of the entity executive’s appointment, unless the company agrees to continue cover and list the entity executive in the schedule.

16. Pecuniary penalties

We will pay any amount which an insured person is legally obligated to pay pursuant to the laws of and in the jurisdictions of Australia or New Zealand as a fine or penalty, provided that we are not legally prohibited from paying such fine or penalty.

This Extension of Cover is limited to the sub-limit specified in the schedule and is not in addition to the limit of liability.

17. Pollution cover

Exclusion 10. ‘Pollution’ of this policy shall:

(a) not apply to any pollution related claim brought by a shareholder of the company in his or her capacity as such, whether directly or derivatively alleging damage to the company or its shareholders, provided that such claim is brought and is continuously maintained without the solicitation, voluntary assistance, or active participation of any director or officer;

(b) not apply, in respect of pollution related claims other than in Extension of Cover 17. ‘Pollution cover’ (a) above, to defence costs incurred by any insured person. The maximum limit of liability for all defence costs under this Extension of Cover 17. (b) ‘Pollution cover’ shall be specified in the schedule which shall be part of and not in addition to the limit of liability of this policy; and

(c) continue to apply to clean up costs notwithstanding anything in this Extension of Cover.

18. 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 person(s) for financial loss, but for whatever reason fails or refuses to do so, then we shall pay on behalf of the insured person(s). In such event, the Insuring Clause 2 deductible specified in the schedule shall be borne by the company.

In the event of the company being placed in liquidation (other than voluntary liquidation), no deductible amount shall apply.
19. Prosecution costs
We agree to pay for or on behalf of an insured person all prosecution costs in the insured person taking legal proceedings:

(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.

The sub-limit for this Extension of Cover for all proceedings and all insured persons is specified in the schedule in the aggregate, and is part of and not in addition to the limit of liability.

20. Retired directors and officers
On the basis that:

(a) this policy is neither renewed nor replaced with a directors or officers or management liability contract of insurance or indemnity; or

(b) no extended reporting period arises or is effected under Extension of Cover 8. “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.

Exclusions

Exclusions applicable to all Insuring Clauses
The following Exclusions are applicable to all Insuring Clauses and we shall not be liable under this policy to make any payment for financial loss (including defence costs) in connection with any claim made against any insured, or investigation costs in respect of an investigation:

1. 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 claim; or
   (b) defence costs and investigation costs specified under Extension of Cover 14. ‘Occupational health and safety’.

2. 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 wilful breach of duty, contract, law or regulation committed by an insured;
   (c) 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 in connection with a corporate manslaughter 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 written admission, court judgment or other final adjudication (including all available appeals).

For the purpose of determining the applicability of Exclusion 2. no conduct or knowledge of an insured shall be imputed to any other insured person.
3. **Consensual claim**
where it is a consensual claim.

4. **ERISA**

for the violation of any responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 enacted in the United States of America or its territories or possessions or by similar regulations or provisions concerning pension, profit sharing or employee benefit programmes or social compensation plans arising under federal, state or local statutory laws in the United States of America, its territories or possessions or which relate in any way thereto.

5. **Insured vs Insured for US claims**

when such claim is brought by, on behalf or at the instigation of the company or any director or officer; however, this exclusion shall not apply to:

(a) a non-US claim brought by:

(i) an insured person;
(ii) the company against a director or officer;
(iii) the company against an insured person, other than a director or officer, if a written opinion has been obtained by the company from a lawyer, approved by us, advising that the board of directors of the company will be in breach of their duties if the claim is not made and that there are prospects greater than 60% of obtaining a judgment against the insured person in respect of such claim;

(b) a claim brought or maintained by a liquidator, receiver or administrative receiver (or the equivalent in any other country), either directly or derivatively on behalf of the company without the solicitation, voluntary assistance or active participation of any director or officer;

(c) a derivative action brought in the name of the company by one or more persons who are not directors or officers and who bring and maintain the claim without the solicitation, voluntary assistance or active participation of any director or officer;

(d) a claim brought by or at the instigation of any insured person 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 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;

(f) defence costs incurred by an insured person.

6. **Medical services**
in respect of, or in any way arising out of the rendering or failure to render professional service and/or advice to others in their capacity of providing medical services to the public. Such medical services shall include, but not be limited to, the carrying out of activities in relation to blood transfusion services, prevention of disease or the supply of medication.

7. **Non outside entity**

alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an insured person serving in his capacity as a director, officer, trustee or manager (or similar position) or an employee of any entity that is not the company or an outside entity, or by reason of his or her status as a director, officer, trustee or manager (or similar position) or an employee of an entity that is not the company or an outside entity.

8. **Outside entity executive – Insured vs Insured**
in respect of any outside entity executive, where the claim is made by, on behalf of or at the instigation of any other director or officer (or equivalent executive or management position in any other country) of the outside entity, or the outside entity itself, for a wrongful act arising out of an insured person serving as an outside entity executive of such outside entity, other than:

(a) a claim brought or maintained by a liquidator, receiver or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the outside entity without the solicitation, voluntary assistance or active participation of the outside entity or its directors or officers (or equivalent executive or management position in any other country);

(b) a derivative action brought in the name of the outside entity by one or more persons who are not directors or officers (or equivalent executive or management position in any other country) of the outside entity and who bring and maintain the claim without the solicitation, voluntary assistance or active participation of the outside entity or its directors or officers (or equivalent executive or management position in any other country);
c) an employment claim brought by a natural person;

d) a claim brought by any former directors or officers (or equivalent executive or management position in any other country) of the outside entity;

e) a claim brought by or at the instigation of any director or officer (or equivalent executive or management position in any other country) of the outside entity if such claim results from a claim brought by a third party against such director or officer of the outside entity and the third party could have brought the claim directly against an insured person not named in the independent claim (including any cross claim / third party claim for indemnity); or

(f) defence costs incurred by an outside entity executive.

9. 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.

10. Pollution

alleging or arising from pollution, except as stated under Extension of Cover 17. ‘Pollution cover’.

11. Prior and Pending

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

(a) litigation, claim, matter or circumstance existing prior to the period of insurance that has been reported or ought to have, but has not, been reported;

(b) fact, circumstance, act or omission or claim disclosed in the proposal or 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 directors and officers or management liability policy of which this policy is a renewal or replacement or which it may succeed in time.

12. Prior notice

being:

(a) an investigation or other proceedings ordered or commissioned at the behest of a legally empowered body, initiated prior to or pending at the date specified in the schedule; or

(b) any litigation, suit, claim, arbitration or mediation initiated prior to or pending at the date 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;

With respect to cover in relation to an outside entity executive, the prior and pending date shall be the date specified in the schedule or the date at which cover first commenced in respect of the outside entity executive, whichever is the later.

13. Professional liability

arising from, based upon, attributable to or as a consequence of a breach of duty in respect of any professional services provided by the insured.

14. Subsidiary

alleging or arising from the wrongful act 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 Condition 3. ‘Creation and acquisition of a subsidiary’.

15. Superannuation fund trustees

in respect of the infringement of obligations imposed by any statute, regulation or common law whilst acting in the capacity of trustee of any pension or superannuation trust, plan or scheme operated by or at the behest of the company for the benefit of its employees.

This exclusion does not apply to an insured person acting in the capacity as defined in Definition of ‘Director or officer’ clause (c).
Additional Exclusions applicable to Insuring Clause 3

The following Exclusions are applicable to Insuring Clause 3 and we shall not be liable under this policy to make any payment for financial loss (including defence costs) in connection with any claim made against the company, or investigation costs in respect of an investigation of:

16. Contractual liability, assumed liability and trading debts
   (a) any contractual liability or assumed liability, unless the company would in any event be legally liable in the absence of such contractual or assumed liability;
   (b) any liability assumed by the company under any guarantee or warranty unless the company would in any event be legally liable in the absence of such contractual or assumed liability;
   (c) any trading debt incurred by the company.

17. Manufacturing / efficacy / faulty workmanship
   (a) the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the insured; or
   (b) the cost ofremedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the insured.

Additional Exclusions applicable to Insuring Clause 4

The following Exclusions are applicable to Insuring Clause 4 and we shall not be liable under this policy to make any payment for financial loss (including defence costs) in connection with any claim made against the company, or investigation costs in respect of an investigation:

18. Employee reinstatement
    based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an employee.

    However, this Exclusion shall not apply to any defence costs undertaken by the company within that action.

19. Continuity of employment benefits
    employment related benefits (other than back pay) to which the claimant would have been entitled as an employee had the insured provided the claimant with a continuance, reinstatement or commencement of employment.

20. Government benefits
    for the performance or non performance of any obligation under:
    (a) any award, law or regulation in any jurisdiction in respect of terms and conditions of employment, worker’s compensation, occupational health and safety, disability benefit, and employment benefits of compensation, disability / income protection, salary continuance or unemployment insurance, retirement benefits, social security benefits, severance pay or payments of benefits in the case of termination of employment due to redundancy or any other cause; or
    (b) any similar federal, state, local or foreign rules or regulations, statutory or common law, subsequent promulgates and amendments to or replacements of, or any similar provisions in another jurisdiction.

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

21. Industrial relations
    based upon, arising out of, or attributable to:
    (a) any collective industrial or labour relations 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 as contained in any amendments to, replacements of, or any similar federal, state or local statute, regulation, or common law; or any similar provisions of law in another jurisdiction.

22. Modifications
    in respect of, 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 undertaken by the company within that action.

23. Unfair employment contract
(a) seeking of relief pursuant to Section 127 A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) or similar legislation in other jurisdictions; or
(b) based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, obligations, or duties imposed by any statutory or common law that governs the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, or the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings.

Conditions
1. Change in control and public offering
If during the period of insurance there is 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.

2. Confidentiality
The existence and terms of this policy shall be confidential as between the insured and Zurich 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 insured entity 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.

3. Creation and acquisition of a subsidiary
(a) Subject to ‘Creation and acquisition of a subsidiary’ (b) below, any entity (other than a financial institution), whether created or acquired, that becomes a subsidiary during the period of insurance of this policy and any directors and officers (or equivalent executive or management position) thereof, shall be insureds under this policy with respect to:
(i) claims for wrongful acts, and
(ii) investigations in relation to conduct, 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 a subsidiary’ (a) above, whose total market capitalisation as of the date of the acquisition is more than 20% of the fair value of the company as reflected in the most recent audited consolidated financial statements or their equivalent, save for a period of 45 days from the date such entity first became a subsidiary or until the expiry date of the period of insurance, whichever period expires first, provided that the policyholder or any insured shall report such subsidiary to us, in writing, prior to renewal of this policy.

(c) With regard to such subsidiary described in ‘Creation and acquisition of a subsidiary’ (b) above, we may, at our sole discretion, extend coverage to such subsidiary and any insured person thereof, beyond such 45 days, if during such 45 day period the policyholder shall:
(i) notify us in writing of the acquisition of such entity;
(ii) provide us with full underwriting information as we may require; and
(iii) agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such subsidiary.

Further, coverage as shall be afforded to any such subsidiary and any insured person thereof beyond the initial 45 day period shall be conditional upon
the policyholder paying, when due, any additional premium required by us for such subsidiary.

(d) We may, at our sole discretion, also agree, in writing, after the presentation of all appropriate information to provide cover for such new subsidiary for wrongful acts and other conduct occurring prior to the date of acquisition.

With regard to such cover for prior wrongful acts 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.

4. Deductible and coinsurance

(a) Separate applicable deductibles are set out in the schedule for financial loss that arises out of each of:

(i) a claim (other than an US Claim);

(ii) an US claim;

(iii) an investigation.

Each such deductible applies to financial loss of:

(1) the insured persons that the company has indemnified, has agreed to indemnify or is permitted or required to indemnify pursuant to law, contract or agreement; and

(2) for Insuring Clauses 3 and 4, in relation to the company.

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

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

(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.

5. Defence costs, settlements and allocation

(a) In respect to Insuring Clause 1, 2 and 3 it shall be the duty of the insured(s) 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. The insured persons shall have the duty to arrange representation at any investigation which is the subject of a claim for indemnity under Extension of Cover 10. ‘Investigations’.

(b) In respect to Insuring Clause 4 we shall have the right at all times to conduct the defence of any claim made against the company.

(c) 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 any investigation, defence or settlement and shall have the right to receive copies of all relevant documentation relating thereto; and

(iii) have the right to effectively associate with the insureds in the defence, investigation and the negotiation of any settlement of any claim or investigation.
(d) In the event of any dispute regarding whether or not to contest any claim against any insured, the matter will be determined by advice of Senior Counsel (to be mutually agreed by the parties and to be paid for by us, and not part of the limit of liability).

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

(e) 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 Extension of Cover 1: ‘Advancement of defence costs and other financial loss’).

We shall not settle any claim against any insured person without the consent of the relevant insured person, such consent not to be unreasonably withheld or delayed.

In addition and notwithstanding any of the foregoing paragraphs in this coverage extension, 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.

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

(i) between the insured persons and any other uninsured person or entity (including the company) where the financial loss has been jointly or jointly and severally incurred by them. Such allocation shall be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the insured persons and those other persons or entities; and/or

(ii) 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 Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Law Society, or equivalent organisation, for the State or Territory out of which the policy was issued). The parties will be bound by Counsel’s determination as to the fair and equitable allocation. The costs of obtaining this opinion will be paid by us and will not form part of the limit of liability.

While no fair and equitable allocation has been agreed or determined in respect of any claim or investigation costs, we will advance defence costs or investigation costs in the proportion which we contend should be allocated to financial loss under this coverage extension. Any such allocation negotiated or determined will be applied retrospectively to all defence costs and investigation costs incurred prior to the date of such negotiation or determination.

6. Notification

The policyholder 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

(b) any investigation as soon as is reasonably practicable after the company’s risk manager, General Counsel, Chief Legal Counsel or equivalent position first becomes aware of such claim, or such investigation, but in all events no later than 60 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 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.

Written notice hereunder shall be given in writing to us named in the schedule at the address indicated in the schedule, and be effective from the date of receipt by us at that address.
7. **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 Insuring Clause 1. and Extension of Cover 10. ‘Investigations’; then

(b) only after payment of financial loss has been made pursuant to Condition 7. ‘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 Insuring Clauses 2, 3 and 4 of this policy.

The company agrees that we are entitled to withhold payment under Insuring Clauses 2, 3 and 4 until our obligations under Insuring Clause 1 and Extension of Cover 10. ‘Investigations’ are met.

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

8. **Other insurance and Non-Accumulation**

(a) To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover financial loss to the extent that the amount of such financial loss is in excess of any indemnity or cover available to the insured in respect of that financial loss under any other policy entered into by the insured persons or the company.

(b) To the extent permitted by the Insurance Contracts Act 1984, this policy will only cover financial loss to the extent that the amount of such financial loss is in excess of any indemnity or cover available to the insured in respect of that financial loss under any other policy 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 Condition 8. (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 Condition 8. (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 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.

9. **Severability and Non-Imputation**

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

In respect of the declarations, statements and financial information of the proposal:

(a) no statement in the proposal, made by any insured or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the proposal) possessed by any insured 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 proposal made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the proposal) possessed by an insured person shall be imputed to the company for the sole purpose of determining if coverage is available under Insuring Clauses 2, and 3 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 Insuring Clauses 2, and 3 of this policy; and

(c) only the statements in the proposal made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the proposal), possessed by any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position) of the company shall be imputed to the company for the purposes of indemnity under Insuring Clause 4 hereof.
10. Subrogation

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 fraudulent act or omission or a criminal act.

11. Territorial scope

Subject to the terms of the policy, coverage under this policy shall extend to claims made, investigations commenced and wrongful acts and other conduct allegedly occurring anywhere in the world.

12. Waiver of contribution

We will not pay any financial 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.
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