

# Zurich Professional Liability Insurance

Financial Institutions – Policy Wording



## Important

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

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

This policy is a 'Claims Made' insurance policy. It only provides cover if a *professional claim* is made against an *insured*, by some other person, during the period when the policy is in force.

The policy does not cover prior claims, prior known facts and prior litigation. See the Prior claims, known facts and litigation exclusion for details.

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

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# Welcome to Zurich

## About Zurich

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

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

## Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

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

### **If you do not tell us something**

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

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Our contract with you

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

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

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

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

# Zurich Professional Indemnity Insurance Financial Institutions Policy Wording

Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this policy.

## 1. Insuring Clause

We will pay on behalf of the *insured* any loss as a result of *professional liability* of the *insured* arising out of any *professional claim* first made against the *insured* by any *third party* during the *period of insurance* and reported to us as soon as practicable during the *period of insurance* and arising out of or in connection with a *wrongful professional act* in the provision of or failure to provide *professional financial services*.

## 2. Definitions

### 2.1 Benefit plan

*benefit plan* means any superannuation fund, employee benefit, pension, welfare benefit, share option or share saver plan or charitable fund or foundation maintained by the *policyholder* or *subsidiary* for the benefit of the past, present and or future *employees* or their respective beneficiaries on or after the inception date of this policy.

### 2.2 Bill of exchange

*bill of exchange* means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

### 2.3 Certificate of deposit

*certificate of deposit* means a written acknowledgement by a bank of a deposit with promise to pay to depositor, to his order, or to some other person or to his order said deposit with interest on a specified date.

### 2.4 Certificated security

*certificated security* means a share, participation or other interest in property of an enterprise of the issuer or an obligation of the issuer, which is:

- 2.4.1 represented by an instrument issued in bearer or registered form;
- 2.4.2 of a type commonly dealt in on security exchanges or markets or commonly recognised in any area on which it is issued or dealt in as a medium for investments; and
- 2.4.3 either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations.

### 2.5 Change in control

*change in control* means if during the *period of insurance*:

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

## **2.6 Cheque**

*cheque* means a *bill of exchange* drawn on a bank, directing it to pay the sum specified on demand.

## **2.7 Computer programs**

*computer programs* means the computer programs being facts or statements converted to a form usable in a *computer system* that act upon *electronic data*.

## **2.8 Computer system**

*computer system* means a computer and all input, output, processing, storage facilities (including off-line media libraries), intranets and communication facilities (including related communication or open systems networks and extranets), which are connected directly or indirectly to such a device.

## **2.9 Continuity Date**

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

## **2.10 Corporate card application**

*corporate card application* means any document required in connection with an application for any corporate charge card, credit card or fuel card issued to the *insured* or at their request for use by any of the *insured's* employees, directors or officers.

## **2.11 Data**

*data* means facts or information (including text, numbers, sounds and images) converted to a form usable in a *computer system* or an *electronic communications system* and which is stored on *storage media*.

## **2.12 Deductible**

*deductible* means the amount applicable to each and every *professional claim* stated in the *schedule*.

## **2.13 Document**

*document* means:

- 2.13.1 original (including original counterparts) negotiable or non-negotiable agreements in writing, having value which value is, in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment, or original corporate, partnership or personal guarantees;
- 2.13.2 any *bill of exchange*, *certificate of deposit*, *cheque*, *draft*, *letter of credit*, *promissory note*, *withdrawal order* or receipt for the withdrawal of funds or *property*, money orders, orders upon public treasuries, or any similar instruments of value serving the same purpose;
- 2.13.3 *certificated securities*;
- 2.13.4 a written order to the issuer of an *uncertificated security* signed by the registered owner, the registered pledgee or a party acting in a fiduciary capacity for the registered owner requesting that the transfer, pledge or release from pledge of the *uncertificated security* specified therein be registered;
- 2.13.5 any assignment, transfer, power of attorney, stock power, or guarantee presented in connection with the transfer, pledge, or release from pledge of an *uncertificated security* and which transfers, pledges or releases from pledge or purports to transfer, pledge or release from pledge such *uncertificated security*;
- 2.13.6 any stock, share, partnership interest, note, debenture, bond, or other evidence of debt or equity ownership and shall include any certificate or participation in, receipt for, warrant or other right to subscribe to purchase, voting trust certificate relating to, certificate of deposit for, or other interest in any of the foregoing;
- 2.13.7 *corporate card application*; and
- 2.13.8 *instruction*.

## Special Condition

Actual physical possession of the original or what purports to be the original *document* by the *insured* or a *financial institution* acting on their behalf prior to having acted upon such *document* is a condition to any claim being made hereunder.

### 2.14 Draft

*draft* means a *bill of exchange* payable on demand drawn by or on behalf of a *financial institution* upon itself whether payable at the Head Office or other office of the *insured*.

### 2.15 Electronic communications system

*electronic communications system* means systems which permit the digital transmission of instructions, messages, information or payments, including:

- 2.15.1 electronic communication operations by Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Clearing House Automated Payment System (CHAPS), the funds transfer system for the transfer of preauthorised recurring debits and credits of an Automated Clearing House Association which is a member of the National Automated Clearing House Association and similar automated communication systems;
- 2.15.2 those systems which operate automated teller machines or point of sale terminals and include any shared networks or facilities for said system in which the *insured* participates;
- 2.15.3 telephone banking communications system which provides clients or customers of the *insured* with access to the *insured's computer system* via an automated touch tone telephone service and which require the use of *tested* code (including but not limited to a PIN number) in order to effect any banking transactions; and
- 2.15.4 *tested* telex and *tested* telefacsimile.

### 2.16 Electronic data

*electronic data* means facts or information converted to a form usable in a *computer system* and which is stored for use by *computer programs* on tapes, discs, CD-Rom or other bulk media, whether magnetic or optical.

### 2.17 Employee(s)

*employee(s)* means any:

- 2.17.1 natural person providing services to the *insured* under a contract of employment with the *insured* (whether full time, part time or temporary) working under their direct control and supervision, other than those persons as described in 2.17.3 below;
- 2.17.2 natural person providing services to the *insured* under a written contract for services with, and working under the direct control and supervision of the *insured*, while that person is acting in the course of such services to the *insured*;
- 2.17.3 director or officer of the *insured* only when:
  - (a) performing acts coming within the scope of the usual duties of an employee providing services to the *insured* under a contract of employment (as described in 2.17.1 above); or
  - (b) acting as a member of a committee duly elected or appointed by resolution of the board of directors of the *insured* to perform specific acts, as distinguished from general directorial acts, on behalf of the *insured*; and
  - (c) working under the direct control and supervision of the *insured*;
- 2.17.4 natural person or company authorised by written contract to perform accounting, data processing of cheques, payroll or computing services on behalf of the *insured* and outsourced to such natural person or company by the *insured*;
- 2.17.5 guest student pursuing studies or duties or any person engaged in work experience or on a training scheme with the *insured* while working under their direct control and supervision;

- 2.17.6 natural person seconded to the *insured* while working under their direct control and supervision;
- 2.17.7 natural person trustee, fiduciary, administrator or officer of any *benefit plan* but not in circumstances where and to the extent that such person is acting in the course of discharging or performing their trustee, fiduciary, administrator or officer role; or
- 2.17.8 natural person who is an ex-employee of the *insured* for a period not exceeding 60 days following the termination of their employment with the *insured*, other than when their employment is terminated as a result of a dishonest, fraudulent, reckless, criminal or malicious act .

*Employee* does not mean any independent broker, independent financial adviser, or any similar agent or independent representative remunerated on sales or commission basis unless specifically agreed in writing by us and endorsed to this policy.

## **2.18 Extended reporting period**

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

## **2.19 Financial institution**

*financial institution* means:

- 2.19.1 any bank, credit institution, financial institution, undertaking for collective investment in securities, investment firm, asset management company, building society, friendly society, or similar organisation;
- 2.19.2 a recognised investment exchange, recognised clearing house, designated investment exchange, designated clearing house, overseas investment exchange or overseas clearing house all as defined in the FSA Handbook, Release 066, June 2007 or any future revisions to said FSA Handbook;
- 2.19.3 any regulated investment exchange or clearing house of the same type and nature as described in 2.19.2 above operating in any country;
- 2.19.4 any custodian with whom the *insured* has a written or electronic agreement for the provision of purchasing services, safekeeping, registration and entitlement records for the *insured* in connection with securities; or
- 2.19.5 any regulated central securities depository or international central securities depository.

## **2.20 Fund**

*fund* means any trust, investment trust, investment fund, investment management company (open or closed ended), fund, managed investment scheme, partnership, undertaking for collective investment, private equity or venture capital fund, real estate fund, sub-fund, compartment, mandate or other similar entity sponsored, created or promoted by the *policyholder* or *subsidiary* and explicitly included in the *submission* but does not include any *benefit plan*.

## **2.21 Instruction**

*instruction* means written or printed instructions or advices:

- 2.21.1 sent by or purporting to have been sent by a client or customer of the *insured* or a *financial institution* and directed to the *insured* or a *financial institution* acting on behalf of the *insured*; or
- 2.21.2 issued by the *insured* authorising the transfer, payment or delivery of funds or *property*.

## **2.22 Insured**

*insured* means:

- 2.22.1 *policyholder* or a *subsidiary*;
- 2.22.2 *employee*; and
- 2.22.3 *fund*.

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



### **2.23 Investment entity**

*investment entity* means any:

- 2.23.1 not-for-profit entity;
- 2.23.2 entity whose equity *securities* are not registered to trade and have not traded in a public market, in which one or more *fund* holds or held a debt or equity interest or has performed or is performing due diligence in anticipation of making an investment of its capital in such *investment entity*; or
- 2.23.3 other entity listed and named as an *investment entity* and agreed in writing by us in an endorsement attached to this policy.

*Investment entity* does not mean any *insured*.

### **2.24 Letter of credit**

*letter of credit* means an engagement in writing by a bank made at the request of a client or customer that the issuer will honour a *draft* or other demand for payment upon compliance with the conditions specified in the engagement.

### **2.25 Limit of liability**

*limit of liability* means the limit as stated in the *schedule* and as provided under General Provision 6.7 'Limit of Liability'.

### **2.26 Loan(s)**

*loan(s)* means:

- 2.26.1 any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained from the *insured*;
- 2.26.2 any note, invoice, account, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the *insured* including the purchase, discounting or other acquisition of false or genuine accounts or invoices; or
- 2.26.3 any payments made or withdrawals from a customer's account involving items which are not paid for any reason.

### **2.27 Loss**

*loss* means:

- 2.27.1 *professional defence costs*;
  - 2.27.2 *professional investigation costs*; or
  - 2.27.3 *professional damages*,
- resulting from a *professional claim*.

### **2.28 Money laundering**

*money laundering* means actual, attempted or alleged, conspiracy to commit, commission of, aiding, abetting, counselling, procuring, or inciting of any act which is in breach of and/or constitutes an offence or offences under:

- 2.28.1 any legislation which implements or is designed to implement the European Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, as amended, and/or any offence under the International Convention for the Suppression of the Financing of Terrorism; or
- 2.28.2 any similar money laundering legislation anywhere in the world including but not limited to Part 7 of the Proceeds of Crime Act 2002 (c. 29) and/or any act which, if it occurred in a part of the United States, would be unlawful under the Racketeer Influenced and Corrupt Organisations Act, 18 United States Code, Chapter 96.

## **2.29 Mortgage document**

*mortgage document* means any original:

- 2.29.1 deeds of trust or like instruments pertaining to real property;
- 2.29.2 debt instrument by which the borrower (mortgagor) gives the lender (mortgagee) a lien on real property as security for the repayment of a mortgage loan; or
- 2.29.3 assignments of such debt instruments as described in 2.29.2 above, in connection with an individual mortgage loan made by the *insured*.

### **Special Condition**

Actual physical possession of the *mortgage document* by the *insured* or *financial institution* acting on their behalf prior to having acted upon such *mortgage document* is a condition to any claim being made hereunder.

## **2.30 Official body**

*official body* means any *regulator*, professional body, authority, Royal Commission, Commission of Inquiry, stock exchange or any other person having legal authority to conduct a *professional investigation*.

## **2.31 Period of insurance**

*period of insurance* means the period of time shown in the *schedule* including any extension thereto agreed in writing by us or the effective date of cancellation of this policy.

## **2.32 Policyholder**

*policyholder* means the entity named in the *schedule*.

## **2.33 Prior known fact**

*prior known fact* means any fact or matter which:

- 2.33.1 an *insured* first became aware of, after the *continuity date*, but prior to the commencement of the *period of insurance*; and
- 2.33.2 knew, or which a reasonable person in the *insured's* position would have thought, at any time after the *continuity date* but prior to the commencement of the *period of insurance*, might result in an allegation against the *insured* of a *wrongful professional act*.

## **2.34 Prior or pending date**

*prior or pending date* means the date specified in the *schedule*.

## **2.35 Professional claim**

*professional claim* means any:

- 2.35.1 written demand, suit or proceeding, including any civil proceeding, counterclaim, arbitration or alternative dispute resolution process, brought by any *third party* against the *insured* for *professional damages* or which could, if successful, reasonably result in the payment of *professional damages*, for a *wrongful professional act*;
- 2.35.2 criminal proceedings arising from a *wrongful professional act*; or
- 2.35.3 *professional investigation* in which no *wrongful professional act* has been specified.

If a series of *professional claims* shall result from any single *wrongful professional act* (or causally related series of *wrongful professional acts*) then, irrespective of the total number of claims, all such claims shall be considered to be a single *professional claim*.

## 2.36 Professional damages

*professional damages* means:

- 2.36.1 compensatory damages, judgements, legal costs and expenses awarded against any *insured*;
- 2.36.2 compensation awarded by an *official body*;
- 2.36.3 civil fines or penalties imposed against an *employee* by law and where insurable by law in the jurisdiction in which the *professional claim* is made;
- 2.36.4 punitive, aggravated or exemplary damages imposed by law and where insurable by law in the jurisdiction in which the *professional claim* is made;
- 2.36.5 any loss, damage, destruction, erasure or misplacement of *documents*; and
- 2.36.6 settlements negotiated with our prior written consent.

*Professional damages* does not mean:

- (i) wages, salaries or other remuneration or any employment related benefits paid by or to any *insured*;
- (ii) the cost of complying with any settlement for or award of non-monetary relief;
- (iii) the multiplied portion of multiplied damages;
- (iv) criminal fines or penalties;
- (v) civil fines or penalties other than as provided under 2.36.3 above;
- (vi) punitive, aggravated or exemplary damages other than as provided under 2.36.4 above;
- (vii) non-pecuniary damages;
- (viii) taxes; or
- (ix) matters that may be deemed uninsurable under the Governing Law of this policy as stated under General Provision 6.5 'Governing law and Policy interpretation'.

## 2.37 Professional defence costs

*professional defence costs* means reasonable and necessary fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably delayed or withheld) and incurred:

- 2.37.1 by or on behalf of the *insured* after a covered *professional claim* is made, in the investigation, defence, discharge, dismissal, adjustment, settlement or appeal of such *professional claim*; or
- 2.37.2 for an accredited expert retained through the *insured's* defence counsel approved by us to prepare an evaluation, assessment, report, diagnosis or rebuttal of evidence in connection with the defence of a covered *professional claim*.

*Professional defence costs* does not mean:

- (i) any fees, costs, charges and expenses incurred prior to the time a matter becomes a *professional claim*;
- (ii) salary or any other remuneration of any *employee*, cost of their time or internal costs or overheads of any *insured*; or
- (iii) *professional investigation costs*.

## 2.38 Professional financial services

*professional financial services* means any financial or professional services provided by or on behalf of the *insured* including any administrative, back office or other operations of the *insured* which directly support the provision of such *professional financial services*. Provided that such *professional financial services*:

- 2.38.1 are provided by or on behalf of the *insured* pursuant to an agreement with a *third party*;
- 2.38.2 are allowed under applicable laws, statutes, rules, regulations issued by any government, governmental agency, regulator, authority or any competent regulatory or fiscal organisation having jurisdiction over the *insured*; and
- 2.38.3 the *insured* providing such *professional financial services* is duly authorised, licensed and/or approved to provide such *professional financial services*.

### **2.39 Professional investigation**

*professional investigation* means any investigation, hearing, examination or inquiry by an *official body* concerning the affairs of an *insured* in the provision of or failure to provide *professional financial services*, once an *employee* of the *insured* receives formal written notice from an *official body* requiring such *employee* to attend or produce documents, provided that:

2.39.1 such written notice from an *official body* first arises during the *period of insurance*; and

2.39.2 the *insured* notifies us of such written notice from an *official body* pursuant to the requirements of General Provision 6.8 'Notification of Claims or Circumstances' of this policy.

*Professional investigation* does not mean any routine regulatory supervision, inspection or compliance reviews, or any investigation, hearing, examination or inquiry which focuses on an industry rather than an *insured*.

### **2.40 Professional investigation costs**

*professional investigation costs* means reasonable and necessary fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably delayed or withheld) and incurred by or on behalf of an *insured* in:

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

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

Provided that the maximum that we will pay in the aggregate for *professional investigation costs* is the sub-limit of liability for *professional investigation costs* stated in the *schedule*.

*Professional investigation costs* does not mean salary or any other remuneration of any *employee*, cost of their time or internal costs or overheads of any *insured*.

### **2.41 Professional liability**

*professional liability* means a legally enforceable obligation to a *third party*.

### **2.42 Promissory note**

*promissory note* means an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of, a specified person or to bearer which is discharged by the *insured* but does not include the purchase, discount, sale, loan or advance of such *promissory note*.

### **2.43 Property**

*property* means:

2.43.1 currency, coins, bank notes, money orders, orders upon public treasuries and stamps;

2.43.2 bullion, metals of all kinds and in whatsoever form and articles made there-from, gems (including uncut gem stones), precious and semiprecious stones;

2.43.3 paintings, drawings and other works of art;

2.43.4 *document* (other than *corporate card application* or *instruction*), certificates of stock, bonds, coupons and all other types of securities;

2.43.5 bills of lading, being documents of title issued by a carrier to the order of a shipper and transferable to another person or entity by endorsement;

2.43.6 negotiable instruments, warehouse receipts, travellers' cheques;

2.43.7 *mortgage document*;

2.43.8 insurance policies and endorsements to insurance policies;

2.43.9 deeds of title, deeds of trust and certificates of title; or

2.43.10 other valuable papers, including books of accounts, and other records including *storage media* (and the *data* stored thereon).

#### **2.44 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* in the reasonable exercise of his/her discretion may engage with our prior written consent to prevent or limit adverse effects or negative publicity in respect of any *professional claim* or *professional investigation*.

#### **2.45 Regulator**

*regulator* means any recognised federal or state government, governmental body, governmental or administrative agency, self-regulatory body or any other official regulator.

#### **2.46 Responsible officer**

*responsible officer* means any partner, director, officer, departmental director, senior manager, general counsel, risk manager, insurance manager, internal auditor, trustee or equivalent of any *insured*.

#### **2.47 Schedule**

*schedule* means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

#### **2.48 Securities**

*securities* means any *document* as defined under the Definition of *document* from 2.13.1 to 2.13.6 only.

#### **2.49 Storage media**

*storage media* means the physical components or materials on which *data* or *computer programs* can be recorded.

#### **2.49 Submission**

*submission* means:

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

#### **2.51 Subsidiary**

*subsidiary* means any entity in which the *policyholder* on or before the inception date of this policy:

- 2.51.1 controls the composition of the board of directors (or equivalent in any other country);
- 2.51.2 controls directly or indirectly more than 50% of the shareholder or equity voting rights; or
- 2.51.3 holds more than 50% of the issued share capital or equity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the applicable Australian accounting standard.

#### **2.52 Tested**

*tested* means a method of authenticating the contents of a communication between the *insured* and a customer or client of the *insured* or a *financial institution*, or between the offices of the *insured*, for the purposes of protecting the integrity of the communication.

## **2.53 Third party**

*third party* means:

- 2.53.1 any past, present or future potential customer or client of the *insured*;
- 2.53.2 any *regulator*;
- 2.53.3 any *regulator*, consumer association or customers association only when acting on behalf of any past, present or future potential customer or client of the *insured* and to the extent that they are statutorily empowered to act on their behalf or when such *regulator*, consumer association or customers association is acting solely in its own interest as a past, present or future potential customer or client of the *insured*; or
- 2.53.4 any other person or entity not included in 2.53.1 to 2.53.3 above.

### **Special Condition**

*Third party* does not mean any *insured*.

## **2.54 Trade secret**

*trade secret* means information, including a formula, compilation, pattern, program, device, method, process or technique that derives independent economic value, actual or potential, from not being generally known and not readily ascertainable through proper means by another person who can obtain economic advantage from its disclosure or use.

## **2.55 Uncertificated security**

*uncertificated security* means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which:

- 2.55.1 is a type commonly dealt in upon securities exchanges or markets;
- 2.55.2 is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and
- 2.55.3 is not represented by an instrument; or
- 2.55.4 is part of a master or global certificate; or
- 2.55.5 represents a paper certificate that has been surrendered by a *financial institution* and which paper certificate has been combined into a master depository note and the paper certificates are immobilised, and is shown as an electronic entry where title is recorded on the relevant register of such securities.

## **2.56 Withdrawal order**

*withdrawal order* means a written instrument requesting the withdrawal of, or acknowledging receipt of, funds or *property* from a savings account maintained with the *insured* by a depositor.

## **2.57 Wrongful professional act**

*wrongful professional act* means any actual or alleged act, error or omission in the provision of or failure to provide *professional financial services* by any *insured* or any other person for whom the *insured* is legally liable or vicariously legally liable.

This shall include, for the avoidance of doubt, any libel, slander or injurious falsehood committed or allegedly committed by an *insured*.

### 3. Extensions of Cover

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

#### 3.1 Advancement of professional defence costs and other loss (including emergencies)

Unless or until we have denied indemnity in respect of a *professional claim* or *professional investigation* and prior to final disposition of the *professional claim*, we will advance the following as they are incurred by an applicable *insured*:

3.1.1 *professional defence costs*; and/or

3.1.2 *professional investigation costs*; and/or

3.1.3 *public relations expenses*.

We will not rely on Exclusion 5.13 'Own wrongdoing' to deny indemnity or to refuse to advance *professional defence costs* 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 the costs and expenses specified in 3.1.1, 3.1.2 or 3.1.3 above 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 loss was or were first incurred.

The maximum that we will pay in the aggregate for the costs and expenses specified in 3.1.1, 3.1.2 or 3.1.3 above, that are incurred in an emergency without our prior written consent, is the Emergency Costs sub-limit of liability stated in the *schedule*.

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 in respect of such *professional claim* or *professional investigation*.

#### 3.2 Continuous cover

Part 5.15.2 of Exclusion 5.15 'Prior claims, known facts and litigation' does not apply to any *professional claim* first made against the *insured* during the *period of insurance* arising from a *prior known fact*, provided that:

3.2.1 the *insured* has maintained without interruption, a Professional Liability policy or similar insurance policy with an insurer from the *continuity date* until the commencement of the *period of insurance*;

3.2.2 the *insured* would have been indemnified under the Professional Liability policy or similar insurance policy in force at the time when the *insured* first became aware of it if the *prior known fact* had been notified to the applicable insurer at that time;

3.2.3 neither the *professional claim* nor the *prior known fact* has previously been notified to us or at any time to any insurer under any insurance policy;

3.2.4 there has been no fraudulent non-disclosure or misrepresentation to us in respect of the *prior known fact*; and

3.2.5 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 *professional claim* than the provisions of this policy.

#### 3.3 Estates, Heirs and Legal representatives

This policy will cover *loss* arising from or in consequence of any *professional claim* made against the estates, heirs or legal representatives of any *employee* with respect to *wrongful professional acts* committed by any *employee* prior to the death, incapacity, insolvency or bankruptcy of such *employee* and provided that such estates, heirs or legal representatives shall observe and be subject to the terms, conditions and limitations of this policy in so far as they can apply.

### 3.4 Extended reporting period

In the event of termination or non renewal of this policy (except for non payment of premium) or a *change in control*, the *policyholder* shall have the right to an *extended reporting period* of:

- 3.4.1 90 days for nil additional premium;
- 3.4.2 12 months upon payment of an additional premium as stated in the *schedule*;
- 3.4.3 24 months upon payment of an additional premium as stated in the *schedule*; or
- 3.4.4 36 months upon payment of an additional premium as stated in the *schedule*,

commencing from the date of such termination or non renewal or *change in control* but only with respect to *loss* as a result of *professional liability* of the *insured* arising out of any *professional claim* made against the *insured* by any *third party* during such *extended reporting period* and reported to us as soon as practicable during such *extended reporting period* and arising out of or in connection with a covered *wrongful professional act* committed prior to the expiry date of the *period of insurance* or the date of termination or non renewal or the date of a *change in control*.

The *policyholder* shall not have the right to an *extended reporting period* if:

- 3.4.5 this policy is replaced or succeeded by another policy covering, wholly or substantially the same risk;
- 3.4.6 we issue an offer to renew this policy, even if the renewal terms differ substantially from the expiring cover;
- 3.4.7 the *policyholder* does not request its purchase in writing within 30 days of the effective date of the termination or non-renewal of this policy or the date of a *change in control*; or
- 3.4.8 the additional premium is not paid in full and received by us within 45 days of the effective date of termination or non-renewal of this policy or the date of a *change in control*.

### 3.5 Joint property liability

This policy will cover *loss* arising from or in consequence of any *professional claim* made against the lawful spouse or domestic partner of any *employee* arising solely out of a *wrongful professional act* committed by any *employee* and made solely against such persons or the estate in his or her respective capacity as the spouse or domestic partner of any *employee*.

The cover provided by this extension is limited to *loss* arising from actions or proceedings for the enforcement of judgements or damages against an *employee* which relate to the ownership of property (including marital community property) jointly held by the *employee* and his or her lawful spouse or domestic partner.

This extension will not cover any *loss*, *claim* or *professional claim* arising out of any act or omission of the lawful spouse or domestic partner.

### 3.6 Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Professional Liability policy in the country where the *policyholder* is domiciled (as indicated in the *schedule*) and such endorsement is to be made available to our clients in such country for no additional premium, then the *policyholder* shall have the right to the benefit of such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.



### 3.7 Mitigation costs

In the event that the *insured* discovers a *wrongful professional act* and reports the *wrongful professional act* to us during the *period of insurance*, we will indemnify the *insured* for any costs, expenses or other loss the *insured* incurs to compensate its customer or client with respect to the *wrongful professional act* provided this prevents, limits or mitigates the *insured's* exposure to any actual or potential claim.

It is agreed that:

3.7.1 we will only be liable to indemnify the *insured* where we are satisfied that:

- (a) the *insured* has a legal liability to compensate the customer or client with respect to the *wrongful professional act*;
- (b) the amount of compensation is reasonable having regard to the legal liability of the *insured*; and
- (c) if the customer or client is not compensated they could bring a *professional claim* against the *insured* for loss arising from the *wrongful professional act*;

3.7.2 we shall not be liable for:

- (a) costs or expenses to which we have not consented;
- (b) internal or overhead expenses of the *insured* other than those involved in taking immediate action which prevents, limits or mitigates exposure to a claim;
- (c) salary or remuneration of any *employee*;
- (d) the amount of any *deductible*; or
- (e) any increase in liability for any claim made against the *insured* arising from taking such action; and

3.7.3 the maximum that we will pay in the aggregate for such costs, expenses or other loss is the Mitigation costs sub-limit of liability stated in the *schedule*.

### 3.8 Newly acquired or Created entities

Cover under this policy is extended to any *subsidiary* or *fund* which the *policyholder* first acquires or creates after the inception of this policy unless such:

3.8.1 *subsidiary* has total assets which are greater than 20% of the total consolidated assets of the *policyholder* (last audited annual report);

3.8.2 *fund* has total assets or total funds under management which are greater than 20% of the total consolidated assets or funds under management of the *funds* insured under this policy at inception of this policy;

3.8.3 *subsidiary* or *fund* is incorporated, formed or based in the United States of America, or any state, territory or possession thereof;

3.8.4 *subsidiary* or *fund* had during the last 5 years any loss or claim that that may have been covered under this policy for an amount exceeding 50% of the applicable *deductible* under this policy; or

3.8.5 *subsidiary* or *fund* performs *professional financial services* that are significantly different from those described in the *submission*.

If a newly acquired or created *subsidiary* or *fund* falls into 3.8.1 to 3.8.5 above inclusive, such entity will be covered under this policy, but only for a period of 90 days from the date the *policyholder* either directly or indirectly through one or more of its *subsidiaries* first acquired or created such *subsidiary* or *fund*, 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* or *fund*.

We may at our sole discretion extend coverage for any such beyond the 90 day period if during the 90 day period:

- 3.8.6 the *policyholder* requests an extension of this policy for such *subsidiary* or *fund* in writing to us;
- 3.8.7 the *policyholder* gives us sufficient details to permit us to assess and evaluate the potential increase in exposure; and
- 3.8.8 the *policyholder* agrees to any additional premium and amendments to the policy required by us at the our sole discretion relating to such new *subsidiary* or *fund*.

Unless otherwise agreed in writing and attached as an endorsement to this policy, cover under this policy for such *subsidiary* or *fund* first acquired or created after the inception of this policy shall only apply for *wrongful professional acts* committed after such entity is first acquired or created and whilst a *subsidiary* or *fund* of the *policyholder*.

### **3.9 Professional investigation costs**

Cover under this policy is extended to cover *professional investigation costs* arising out of a *professional investigation*.

### **3.10 Public relations expenses**

Cover under this policy is extended to pay *public relations expenses* where for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of any *professional claim* or *professional investigation* covered by this policy. However:

- 3.10.1 the *insured* must notify us within 30 days of first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the circumstances surrounding the event;
- 3.10.2 we must have given prior written consent to retain the services of such public relations consultants; and
- 3.10.3 the maximum that we will pay in the aggregate for *public relation expenses* is the Public relations expenses sub-limit of liability stated in the *schedule*.

### **3.11 Sale of Subsidiary or Fund**

This policy shall continue to provide cover for any *professional claim* made against the *insured* for *wrongful professional acts* committed by any *subsidiary* or *fund* which is sold during the *period of insurance*.

Provided always that:

- 3.11.1 such *professional claim* results from acts committed or events taking place in their entirety prior to the date of such sale;
- 3.11.2 such *professional claim* is first made during the *period of insurance*; and
- 3.11.3 the *policyholder* (or any *subsidiary* or *fund* other than the sold *subsidiary* or *fund*) remains legally or contractually liable for such *professional claim*.

## **4. Optional Extension of Cover**

Subject to all the terms, conditions and limitations of this policy, if the *schedule* includes this Optional Extension of Cover as insured, cover is extended as follows:

### **4.1 International Program extension**

#### **4.1.1 Agreement clause**

This policy is part of an *international program* and the *policyholder* of this policy on behalf of all *insureds* of *international program policies* has agreed to specific terms, conditions, exclusions and limitations for this policy and all *international program policies*, including but not limited to the addition of a *non aggregation of limits agreement*.

It is agreed that all *international program policies* must be read in this context.

#### 4.1.2 Financial interest cover for certain foreign jurisdictions

The *insurer* will indemnify the *policyholder* for the *financial interest of the policyholder* in connection with the *loss* of any *insured* located in any *restricted foreign jurisdiction* as arises from or is a consequence of *professional liability* of such *insured* arising out any *professional claim* first made against such *insured* by any *third party* in such *restricted foreign jurisdiction* and first made against such *insured* during the *period of insurance* or the *extended reporting period* (if covered) by reason of a *wrongful professional act* in the provision of or failure to provide *professional financial services*, but only if and to the extent that:

- (a) such *loss* would fall within the Insuring Clause or an Extension of Cover provided under this policy but for the fact that this policy is not permitted to provide coverage for such *loss* due to the law of such *restricted foreign jurisdiction*; and
- (b) *international program policies* for such *restricted foreign jurisdiction* have not been purchased; or
- (c) *international program policies* for such *restricted foreign jurisdiction* have been purchased, but the limit of liability of such *international program policies* is not sufficient to cover the entire *loss* of such *professional claim*.

Each *insured* accepts that any payment by the *insurer* to the *policyholder* pursuant to this clause shall discharge any liability which the *insurer* might have had to such *insured* in respect of the relevant liability.

#### 4.1.3 Specific Definitions (applicable to this Optional Extension of Cover)

- (a) *Aggregate limit of liability* means and shall be the maximum *limit of liability* of this policy and all *international program policies* (combined) and all payments of the *insurer* and Zurich for all *loss* under this policy and all *international program policies* (or any combination of the above mentioned policies) are added up and are limited to the amount of the *limit of liability* of this policy as indicated in the *schedule*.
- (b) *Financial interest of the policyholder* (as set out in 4.1.2 'Financial interest cover for certain foreign jurisdictions' above) means and shall be deemed to be representing the equivalent to the *loss* of any *insured* (other than the *policyholder*):
  - (i) located in a *restricted foreign jurisdiction* in respect of *loss* in respect of a *professional claim*, sustained by or made against such *insured* (other than the *policyholder*); and/or
  - (ii) in respect of *loss* in respect of a *professional claim*, sustained by or made against such *insured* (other than the *policyholder*), but only in the case and to the extent that either such *policyholder* or the *insured* (other than the *policyholder*) has paid or is contractually obliged to pay such *loss* to the *insured* (other than the *policyholder*),

subject to all the terms, conditions, exclusions and limitations of this policy.

The *financial interest of the policyholder* arises by virtue of:

- (iii) the *loss* that it incurs in indemnifying, or by having the contractual obligation to indemnify, any *insured* in respect of the *loss* of such *insured* located in *restricted foreign jurisdiction* covered under this policy; or
- (iv) the fact that any of the *insureds* located in a *restricted foreign jurisdiction* remain uninsured under any *international program policies* purchased for such *insured* (other than the *policyholder*) in excess of such local policy's limits of liability, subject to local legal restrictions or limitations,

subject to all other terms, conditions, exclusions and limitations of this policy.

- (c) *Foreign jurisdiction* means any jurisdiction other than the country where this policy is issued.
- (d) *International program* means a compilation of different locally issued *international program policies* which all have one common goal, to cover the *insureds* of these *international program policies* world-wide on terms, conditions and limitations agreed to by the *policyholder* of this policy on behalf of all *insureds* under such *international program policies*.

- (e) *International program policies* means the policies listed in the *schedule* which all have one common goal, to cover the *insureds* of such *international program policies* world-wide on terms, conditions and limitations agreed to by the *policyholder* of this policy on behalf of all *insureds* under such *international program policies*.
- (f) *Non aggregation of limits agreement* means:
  - (i) the *limit of liability* under this policy shall be reduced by any *loss* paid or which is agreed to be paid under any other *international program policies* and the limit of liability under any and all *international program policies* shall be reduced by any *loss* paid or which is agreed to be paid under this policy and any other *international program policies*; and
  - (ii) the limits of liability of each *international program policies* therefore is combined and is part of and not in addition to the *limit of liability* of this policy and each other *international program policies*;
- (g) *Restricted foreign jurisdiction* means any *foreign jurisdiction* where local risks cannot be covered by an overseas insurer not licensed in such jurisdiction;
- (h) For the purpose of this Optional Extension of Cover, Zurich means the *insurer* and any other member of the Zurich Insurance Group and/or any partners of Zurich Insurance Group designated by Zurich Insurance Group to issue *international program policies*.

#### 4.1.4 Specific Provisions (applicable to this Optional Extension of Cover)

- (a) Hold harmless agreement – Special conditions regarding Aggregation
 

In the event that the *aggregate limit of liability* is exceeded by any and all payments under this policy and/or any or all *international program policies*, the *policyholder* of this policy shall reimburse the *insurer* or Zurich and/or any partners of Zurich that issued any *international program policies* in respect of any *loss* paid by any of the insurers of the *international program policies* in excess of the *aggregate limit of liability*.

Any amount due to the terms of this Section shall be paid by the party within 30 days of notice from the other party.
- (b) Non-Aggregation of Limits of Liability clause
 

It is understood and agreed that corresponding to the liability of the *policyholder* and any *subsidiary* to pay the aggregate premium for this policy and all *international program policies*, all contractual parties to this policy and all *international program policies* agree that for the purpose of the calculation of the *limit of liability* of this policy and all *international program policies* (combined), all payments of *loss* under this policy and all *international program policies* (or any combination of the above mentioned policies) are added up and are limited to the amount of the *limit of liability* of this policy as indicated in the *schedule* (hereinafter called the *aggregate limit of liability*).

It is further understood and agreed that nothing in this Clause, Extension or policy shall be construed to increase the:

  - (i) limit of liability set out in the *schedule* of any *international program policies*, which shall remain the maximum liability of the *insurer* under such policy; or
  - (ii) *insurer's limit of liability* under this policy as set out in the *schedule* of this policy which shall remain the maximum liability of the *insurer* under this policy.
- (c) Notice and Authority for International Programs
 

It is agreed that the *policyholder* shall act on behalf of any *subsidiary* and each and every *insured* with respect to the issuance and development of all *international program policies*, including all terms, conditions, exclusions and limitations of such *international program policies*, including, but not limited to 4.1.4 (b) above.

It is further understood and agreed that the *policyholder* will inform its *subsidiary* of any *international program policies* to be issued for such *subsidiary*.

## 5. Exclusions

We shall not be liable to make any payment in relation to any *professional claim, professional investigation, professional liability, wrongful professional act or public relations expenses*:

### 5.1 Bodily injury or Property damage

alleging, arising out of, based upon or attributable to bodily injury, sickness, emotional or mental distress, disease or death of any person, or loss of or damage to or destruction of any property from any cause, including the loss of use thereof, or the violation of any person's right of privacy.

This Exclusion shall not apply to clause 2.36.4 in the definition of *professional damages*.

### 5.2 Business risks

arising out of, based upon or attributable to any:

5.2.1 proprietary trading loss, financial loss or a business loss where the *insured* is acting on its own behalf or as principal; or

5.2.2 liability under a contract of insurance or reinsurance to pay benefits or indemnity due to an *insured's* capacity as the insurer or re-insurer of such contract of insurance or reinsurance.

### 5.3 Contractual liability

alleging, arising out of, based upon or attributable to any liability assumed or accepted by the *insured* under any contract or agreement except to the extent such liability would have attached to the *insured* in the absence of such contract or agreement.

### 5.4 Employment liability

alleging, arising out of, based upon or attributable to any actual or alleged breach by the *insured* of any obligation or duty owed or purportedly owed as a current, former or prospective employer.

### 5.5 Fees, Commissions, Premiums or Other Compensation

alleging, arising out of, based upon or attributable to or in any way connected with any fees, commissions, premiums or other compensation for any professional financial services rendered or required to be rendered by the insured or to that portion of any settlement or award in an amount equal to such fees, commissions, premiums or other compensation.

### 5.6 Information technology failure

alleging, arising out of, based upon or attributable to any mechanical failure, wear or tear, gradual deterioration, electrical disturbance, storage media failure or breakdown or any malfunction or inadvertent error in programming.

### 5.7 Insolvency of the insured

alleging, arising out of, based upon the insolvency, receivership or liquidation of the *insured*.

### 5.7 Insured versus Insured

alleging, arising out of, based upon or attributable to or in any way connected with any claim brought by or on behalf of:

5.8.1 an *insured*, or successors or assigns of any *insured*; or

5.8.2 the *policyholder's* parent company (or any parent, subsidiary or affiliate thereof).

This Exclusion shall not apply to any claim:

(i) brought by an *insured* for contribution or indemnity, if the claim directly results from another claim otherwise covered under this policy as long as such claim is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*; or

- (ii) brought by an *employee* as long as such claim is brought solely in their capacity as a customer or client of the *insured* entity and is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*.

### **5.9 Intellectual property**

alleging, arising out of, based upon or attributable to or in any way connected with a breach of any:

- 5.9.1 intellectual property licence, patent, copyright, trade or service mark;
- 5.9.2 other form of registered intellectual property right; or
- 5.9.3 right to privacy or misappropriation of a *trade secret*.

### **5.10 Lender's liability (USA and Canada)**

arising out of, based upon or attributable to any *professional liability* in connection with any actual or alleged:

- 5.10.1 *loan* whether authorised or unauthorised, except to the extent that such *professional liability* arises in relation to the administration of such *loan*; or
- 5.10.2 collection, foreclosure or repossession in connection with such *loan*.

This Exclusion shall only apply to *professional liability*:

- (i) arising out of, based upon or attributable to any act, error or omission committed or omitted wholly or partly within the United States of America or Canada; or
- (ii) for any *professional claim* brought wholly or partly within the United States of America or Canada.

### **5.11 Money laundering**

alleging, arising out of, based upon or attributable to or in any way connected with any actual or alleged act of *money laundering*.

### **5.12 Nuclear**

alleging, arising out of, based upon or attributable to, or in any way involving directly or indirectly, the hazardous properties of nuclear material including but not limited to the actual, alleged, threatened or potential:

- 5.12.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.12.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **5.13 Own wrongdoing**

alleging, arising out of, based upon, or attributable to:

- 5.13.1 the gaining of any profit or advantage to which the *insured* is not legally entitled;
- 5.13.2 any *wrongful professional act* which was deliberately committed;
- 5.13.3 the committing of any criminal, dishonest, fraudulent or malicious acts by an *insured*; or
- 5.13.4 any knowing or wilful violation of any law or regulation by an *insured*,

where it is established by an admission, judgement, award or finding by a court, tribunal or arbitrator with jurisdiction to finally determine the matter (including the outcome of any appeal in relation to such judgement, award or other finding) that such conduct did in fact occur.

This Exclusion shall not apply to any *insured* who did not commit or condone such conduct.

### **5.14 Pollution**

alleging, arising out of, based upon the actual, alleged or threatened discharge, dispersal, release or escape of, or records concerning pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants.

### 5.15 Prior claims, known facts and litigation

alleging, arising out of, based upon or attributable to or in any way connected with:

5.15.1 any litigation, *professional claim*, fact or circumstance that has been:

- (a) notified under any policy of which this *policy* is a renewal or replacement or which it may succeed in time; or
- (b) disclosed in the *submission* or notified to any other insurer before the commencement of the *period of insurance*;

5.15.2 any *prior known fact* that ought to have, but has not, been reported under any policy of which this *policy* is a renewal or replacement or which it may succeed in time; or

5.15.3 any Litigation commenced, pending, settled or dismissed on or before the *prior or pending date*, or Litigation against any *insured* derived from the same or essentially the same facts as alleged in such Litigation on or before the *prior or pending date*.

For purposes of this Exclusion Litigation includes, but is not limited to, any civil or criminal proceeding, any administrative or regulatory proceeding or official investigation, any arbitration, or any adjudication of any kind.

### 5.16 Regulator

arising out of, based upon or attributable to any claim brought by, in the right of, on behalf of or instigated or maintained by any *official body* whether directly or indirectly.

This Exclusion shall not apply:

- (i) with respect to *professional investigation costs*;
- (ii) when such *official body* is acting solely in its own interests as a customer or client of an *insured*;
- (iii) when acting on behalf of any client or customer of any *insured* pursuant to any statutory provision; or
- (iv) to civil fines or penalties covered under clause 2.36.3 of the definition of *professional damages*.

### 5.17 Stakeholder

arising out of, based upon or attributable to any claim brought by, in the right of, on behalf of or instigated by:

5.17.1 a shareholder, bondholder or a holder of any similar corporate benefit or obligation;

5.17.2 a former, current or prospective *employee*; or

5.17.3 any beneficiary in any *employee benefit plan* or program, of the *insured* in their capacity as such.

### 5.18 War and Terrorism

arising out of directly or indirectly, based upon or attributable to or in any way involving war, terrorism, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority.

## 6. General Provisions

### 6.1 Cancellation

The *policyholder* may cancel this policy at any time by giving notice in writing to us.

We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect within 30 days from the time of notification received by the *policyholder*.

Upon cancellation by the *policyholder* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*. However in the event of the notification of a *professional claim* or circumstance which is covered under this policy, the premium shall be regarded as fully earned and may be retained by us.

## 6.2 Change in Control

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

The *policyholder* shall give us written notice of such *change in control* as soon as reasonably practicable. All notices shall be given to the Financial Lines Underwriter at the appropriate Zurich branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

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 on or before the date of such *change in control*.

## 6.3 Deductible

We shall only be liable for the amount of any *professional claim* that exceeds the *deductible*.

The *deductible* is not part of our liability for any *professional claim*.

A single *deductible* shall apply to any single *professional claim* and shall be subject to no aggregate limitation.

## 6.4 Defence and Settlement

It shall be the duty of any *insured* against whom a *professional claim* is made to take all reasonable steps to defend such *professional claim* and not to do anything to prejudice our position.

We shall have no duty to defend any *professional claim* made against any *insured*.

With respect to any *professional claim* as may potentially be covered by this policy we shall:

- 6.4.1 have the right to be provided with all information concerning such *professional claim* as we shall reasonably require;
- 6.4.2 be kept fully informed as to all matters relating to or concerning the investigation, defence or settlement of such *professional claim* and shall have the right to receive copies of all relevant documentation relating thereto; and
- 6.4.3 have the right to effectively associate with the *insured* in the defence, investigation and negotiation of any settlement of such *professional claim* that involves or appears reasonable to involve us making a payment under this policy.

The *insured* shall not admit or assume liability, enter into settlement agreement, or consent to any judgment without our prior written consent (which shall not be unreasonably withheld or delayed). A written report of the kind referenced to in section 912d of the Corporations Act 2001 (Cth) does not constitute an admission of liability. Only settlements or judgments resulting from any *professional claim* defended in accordance with this policy shall be recoverable as *professional damages* under this policy.

So far as the operative agreement between the *insured* and the *third party* bringing a *professional claim* contains a limitation of liability clause which expressly limits the *insured's* liability for gross negligence, we hereby acknowledge that should the *insured* seek our consent to settle a *professional claim* where there is either no claim made for gross negligence nor evidence to support such a claim, we shall base our consent upon whether the *insured* would be legally liable for negligence or another covered cause of action. This extension shall not in any way amend, change, limit or waive any of our rights or obligations pursuant to this policy.

If any *professional claim* is contested the *insured* shall provide all such information and assistance as is reasonably required by us and our representatives to enable the effective defence of such *professional claim*.



## 6.5 Governing law and Policy interpretation

The validity and interpretation of this policy shall be governed by and construed in accordance with the laws of the country named in the *schedule*.

Headings are descriptive only, not an aid to interpretation.

Singular includes the plural, and vice versa.

The male includes the female and neuter.

All references to specific legislation include amendments to and re-enactments of such legislation and similar legislation in any jurisdiction in which a *professional claim* is made.

References to positions, offices or titles shall include their equivalents in any jurisdiction in which a *professional claim* is made.

## 6.6 Innocent non-disclosure

We will not seek to avoid or repudiate this policy on the grounds of non-disclosure or misrepresentation other than fraudulent non-disclosure or fraudulent misrepresentation.

## 6.7 Limit of Liability

The *limit of liability* as stated in the *schedule* shall be our maximum aggregate liability payable under this policy during the *period of insurance* and the *extended reporting period*. The *limit of liability* and any sub-limit of liability shall apply over and above the applicable *deductible*.

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*.

Our aggregate liability for claims 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 claims were made by any one of the persons, companies or other entities forming part of the *insured*.

Any sub-limit of liability set forth in this policy (including the *schedule*) is the most we will pay in the aggregate under this policy in respect of any insurance cover or extension to which it applies and is part of and not in addition to the *limit of liability* as stated in the *schedule*.

## 6.8 Notification of Claims or Circumstances

The *insured* shall, as a condition precedent to payment under this policy, give written notice to us as soon as is reasonably practicable of any:

6.8.1 *professional claim* made against any *insured* or notice from any person or entity of an intention to make such *professional claim*; or

6.8.2 *professional investigation*.

Written notice shall include a description of the *professional claim* or circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *insured* first became aware of the *professional claim* or circumstances.

Should the *insured* become aware of any circumstances which could reasonably be expected to give rise at a later date to a *professional claim*, then written notice to us of such circumstances will be accepted as the date of notification of a *professional claim* under the policy, provided that such written notice of such circumstance shall make reference to the *wrongful professional act* which may give rise to such *professional claim*, and the material facts which give rise to the belief that a *professional claim* may be made.

Any notice under or in connection with this policy that relates to a *professional claim* or circumstances shall be given to the appropriate Zurich branch office, addressed as follows:

Zurich Australian Insurance Limited  
Attention: Financial Lines, Claims Manager

## 6.9 Other insurance

If *loss* under this policy would, but for the existence of this policy, be insured by any other valid and collectable policy or indemnity, we shall only be liable for any amount beyond that collectable under such other policy or indemnity unless such other insurance is written only as specific excess insurance over the *limit of liability* provided by this policy.

## 6.10 Payments in respect to Goods and Services Tax

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

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

## 6.11 Payment of Professional defence costs

Except to the extent that we have denied coverage, and subject to the *limit of liability* and *deductible* we shall pay *professional defence costs* as and when incurred by the *insured*, in respect of any *professional claim* prior to the final resolution of such *professional claim*.

Such payments must be repaid to us by the *insured*, severally according to their respective interests, in the event and to the extent that such *professional claim* is ultimately determined not to be covered, or is resolved on terms or in a manner which exclude such *professional claim* from coverage under this policy.

## 6.12 Policy signature

This policy is only binding upon us if it is signed in the *schedule* by our *authorised representative*.

## 6.13 Recoveries

In the case of recovery by either the *insured* or us on account of any paid *loss*, the amount recovered, shall be applied as follows:

- 6.13.1 Firstly, for any costs and expenses reasonably and necessarily incurred by the relevant party in relation to the recovery;
- 6.13.2 Secondly, to reimburse the *insured* for any part of covered *loss*, as submitted for payment to us which exceeds the *limit of liability*;
- 6.13.3 Thirdly, to reimburse us for any *loss* paid under the policy; and
- 6.13.4 Finally, to reimburse the *insured* for any *loss* that falls under any *deductible*.

## 6.14 Sanctions regulation

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

## 6.15 Severability and Non-imputation

Where this policy insures more than one party, the application for insurance is construed as a separate application by each *insured*. When determining whether coverage is available under this policy:

- 6.15.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- 6.15.2 for the purpose of the Exclusion 5.13 'Own wrongdoing', no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

## 6.16 Subrogation

We upon payment of any *loss* shall be subrogated to all rights and remedies of the *insured* in respect of such *loss* and the *insured* shall do nothing to prejudice those rights. For the avoidance of doubt when the *insured* has entered into contracts with other parties before a *claim* which contracts exclude or limit the liability of those other parties we shall not consider our rights prejudiced.

We shall be entitled to pursue and enforce such rights in the name of the *insured* who shall provide us with all reasonable assistance and co-operation, including the execution of all papers required and shall do everything that may be necessary to secure any rights and including the execution of any documents necessary to enable us effectively to bring suit in the name of the *insured*, whether such acts shall be or become necessary before or after payment by us.

We shall not exercise any such rights against:

6.16.1 the *insured*; or

6.16.2 any *employee*, director or officer of the *insured* in respect of *loss* unless such *loss* arises from or is contributed to by the dishonest, fraudulent, reckless, criminal or malicious act of such *employee*, director or officer of the *insured*,

except to the extent that such *employee*, director or officer is (or would be but for the liability of the *insured* or any coverage provided under this policy) entitled to indemnity under a separate policy of insurance regardless of whether any amount is paid under such other policy in respect of the acts or omissions complained of.

## 6.17 Territorial scope of cover

This policy shall only cover final judgments or orders against the *insured* in the courts of the country of jurisdiction stated in the *schedule* and not to judgments or orders obtained elsewhere whether by way of reciprocal agreements or otherwise.

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