

# Public Offering of Securities Directors, Officers and Company Liability

Policy Wording



## Important

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

This notice is provided in connection with but does not form part of the policy. This is a 'claims made' liability insurance policy. It only provides cover if:

1. a *claim* is made against the *insured*, by some other person, during the *period of insurance*; and
2. the *claim* arises out of a *wrongful act* committed, attempted or alleged to have been committed or attempted after the *date of continuous cover* stipulated in the *schedule*.

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

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

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

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# Zurich Public Offering of Securities Directors, Officers and Company Liability

## About Zurich

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

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

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

## How to apply for this insurance

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

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

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

## Duty of disclosure

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

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

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

## 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 *schedule* issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as in an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your *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.

## Our Agreement

Subject to your agreement to pay the premium set out in the *schedule* we agree with the *insured persons* and the *company* to provide insurance in accordance with the terms, conditions and limitations of this policy.

## Insuring Clauses

The following insurance covers are afforded solely for *securities claims* arising from the *public offering* first made against an *insured* during the *period of insurance* or the extended *reporting period* (if applicable) and notified to us as required by the policy.

### 1. Insured person

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

### 2. Company reimbursement

We will pay on behalf of the *company* the *financial loss* of:

- (a) an *insured person*;
- (b) the *underwriter*,

in respect of any *securities claim* first made against such *insureds* during the *period of insurance* or the *extended reporting period* (if applicable) but only to the extent the *company* has indemnified the *insureds* pursuant to the *company's* indemnity laws, agreements, contracts or the *underwriting agreement*.

### 3. Securities claims

We will pay on behalf of the *company* *financial loss* which arises from or is a consequence of any *securities claim* first made against the *company* during the *period of insurance* or the *extended reporting period* (if applicable).

### 4. Controlling shareholder and Selling shareholder

We will pay on behalf of the:

- (a) *controlling shareholder*; and/or
- (b) *selling shareholder*,

the *financial loss* of such *controlling shareholder* and/or *selling shareholder* in respect of any *securities claim* made against such individual or entity but, only if and so long as such *securities claim* made against such individual or entity is also made, and is continuously maintained, against an *insured person*.

## Definitions

For the purposes of this policy:

### Additional insured

*additional insured* means any:

- (a) *controlling shareholder*; and
- (b) *selling shareholder*.

### Bodily injury

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

### 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 a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person*, an *underwriter* or an *additional insured* 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 monetary damages or non-monetary relief;
- (b) a civil proceeding, suit or counter-claim commenced by the service of a statement of claim, summons or similar pleading;
- (c) a criminal proceeding;
- (d) an arbitration, mediation proceeding or alternative dispute resolution proceeding;
- (e) any request to extend the operation of or waive any statute of limitations or contractual time-bar,

which alleges a *wrongful act*.

The term '*claim*' shall include a *securities claim*, *extradition claim* or an *environmental mismanagement claim*.

### Clean up costs

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

### Controlling shareholder

*controlling shareholder* means any entity or natural person named in the *schedule* who directly or indirectly:

- (a) controls the majority of the voting shares; or
- (b) controls through the right to appoint or remove a majority of the Board of Directors; or
- (c) controls, alone, pursuant to a written agreement with other shareholders, a majority of the voting rights; or
- (d) holds more than half of the issued share capital,

in the *company* in a capacity as a shareholder of the *company*.

### Company

*company* means:

- (a) the *policyholder*; or
- (b) any *subsidiary* of the *policyholder*.

### 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 Clause 3. the date specified in the *schedule*.

### Deductible

*deductible* means the amount stated in the *schedule* that shall be the responsibility of the *company*, as applicable, to pay in respect of each *claim* under Insuring Clauses 2. and/or 3. and/or 4. of the policy for *financial loss*.

### Defence costs

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

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

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

### Deprivation of assets expenses

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

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

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

### Director or Officer

*director or officer* means:

- (a) any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in any other country;
- (b) any natural person who is a past, present or future *shadow director* of the *company*;
- (c) any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *company*;
- (d) any *director or officer* defined in (a) to (c) above, who is or was a member of the *company's* internal audit committee, or any other internal committee of the *company*;
- (e) any *employee* of the *company* who is a past, present or future corporate general counsel (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *company*; and
- (f) any natural person named as a prospective director in the listing particulars or prospectus for a *public offering* issued by the *company*.

### Documents

*documents* means the prospectus or information memorandum or other offering documents listed in the *schedule*, including all supplements, amendments and related documents and the *underwriting agreement*.

### Employee

*employee* means a natural person while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service.

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

### Environmental event

*environmental event* means:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or *greenhouse gases* into or on real or personal property, water or the atmosphere; or
- (b) any direction or request that the *company* or *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or *greenhouse gases*, or any voluntary decision to do so,

whether or not such *greenhouse gases* are *pollutants*.

### Environmental mismanagement claim

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

- (a) is against an *insured person* for *wrongful acts* from an *environmental event* and/or in connection with misrepresenting or failing to disclose information within the *documents* related to *greenhouse gases* or actual or alleged global warming or climate changes; or
- (b) results in *financial loss* incurred by *insured persons* for which the *company* does not indemnify the *insured persons* either because the *company* is neither permitted nor required to grant such indemnification.

### Extended reporting period

*extended reporting period* means the relevant period of cover arising or offered under Extension of Cover 8. 'Extended reporting period'.

### Extradition claim

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

### Extradition costs

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

### Financial loss

*financial loss* means:

- (a) damages, judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) that any *insured* becomes legally liable to pay;
- (b) sums payable for any settlement to which we have consented;
- (c) *defence costs*;
- (d) *investigation costs*;
- (e) *extradition costs*;
- (f) *prosecution costs*;
- (g) *public relation expenses*;
- (h) *civil or bail bond expenses*;
- (i) *deprivation of assets expenses*;
- (j) fines and pecuniary penalties which an *insured* is legally obligated to pay, provided we are not legally prohibited from paying such fine or penalty and excepting fines and pecuniary penalties referred to in paragraph (iii) below of this definition of *financial loss*; and
- (k) punitive, exemplary, aggravated and multiple damages unless uninsurable by law.

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

- (i) taxes (other than those covered by Condition 8. 'Goods and Services Tax');
- (ii) social security contributions;



- (iii) fines and pecuniary penalties imposed by law for a deliberate or intentional breach of law or any matter deemed uninsurable or prohibited under the law applicable to this policy;
- (iv) damages that are uninsurable by law;
- (v) *clean up costs*; or
- (vi) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Australian Prudential Regulation Authority or similar.

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

#### **Force majeure event**

*force majeure event* means a sudden, unforeseeable event wholly outside the control of any *insured* which first occurs after the inception date of this policy and which is notified to us as soon as practicable.

#### **Greenhouse gases**

*greenhouse gases* means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>), or any other emission or substance defined by applicable law as a Greenhouse gas.

#### **Insured**

*insured* means:

- (a) any *insured person(s)*;
- (b) any *underwriter*;
- (c) any *additional insured*; and
- (d) the *company*.

#### **Insured person(s)**

*insured person(s)* means:

- (a) *director or officer*;
- (b) *employee* of the *company* who is the risk manager (or equivalent position) of the *policyholder*;
- (c) *employee* of the *company* while acting in a managerial or supervisory capacity for the *company*;

- (d) *employee* of the *company*, other than a *director or officer*, in relation to:
  - (i) any *securities claim*; or
  - (ii) all other *claims*, but only if and as long as such *claim* is also made, 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 (a) to (d) immediately 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 person(s)* (a) to (d) immediately above.

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

#### **Investigation**

*investigation* means a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by an *official body*, arising from the *public offering*.

#### **Investigation costs**

*investigation costs* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*) incurred with our written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* preparing for and attending an *investigation*.

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

#### **Judicial order**

*judicial order* means:

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

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

### **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**

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

The term *non-executive director* shall also include any natural person who begins serving as a non-executive director of the *company* during the *period of insurance*.

### **Non-Executive Director Excess Aggregate Limit of Liability**

*non-executive director excess aggregate limit of liability* means the Limit of Liability specified in the *schedule* in respect of 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 Excess Limit of Liability**

*non-executive director excess limit of liability* means the Limit of Liability 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*.

### **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 the conduct of an *insured person* in such capacity.

For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange.

### **Period of insurance**

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

### **Policyholder**

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

### **Pollutants**

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

### **Prior known fact**

*prior known fact* means any fact or matter which an *insured person*:

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

### **Property damage**

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

### **Prosecution costs**

*prosecution costs* means the reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employee* of any *company*, costs of their time or overhead of any *company*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, incurred pursuant to Extensions to Cover 15. 'Prosecution costs'.

### **Public offering**

*public offering* means the actual or proposed offering of *securities* of the *company* that is the specific subject of the *documents* filed pursuant to the Corporations Act 2001 (Cth), Securities Act 1978 (NZ), Securities Markets Act 1998 (NZ), UK Financial Services and Markets Act 2000, United States Securities Act of 1933 (as amended) or the United States Securities Exchange Act of 1934 (as amended) or any other similar statute, rule or regulation (or any similar statute, rule or regulation in any other jurisdiction), including, but not limited to, any negotiations, discussions, decisions or presentations in connection with such actual or proposed offering of such *securities* of the *company* including but not limited to shelf registrations which occurred prior to:

- (a) the filing or issuance of the *documents*; or
- (b) the admission of such *securities* of the *company* to listing on an approved exchange, whichever is later.

### 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 the *company* in the reasonable exercise of its discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of the cancellation or postponement of the *public offering* or sale of *securities* due solely to a *force majeure event*.

### Schedule

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

### Securities

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

### Securities claim

*securities claim* means a *claim* that:

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

### Selling shareholder

*selling shareholder* means the natural person(s) or entity(ies) named in the *schedule*.

### Shadow director

*shadow director* means any natural person who is deemed a director by paragraph (b) of the definition of Director (or any similar law, rule or regulation in any other jurisdiction) in section 9 of the Corporations Act 2001 (Cth).

### Sub-limit

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

### Submission

*submission* means:

- (a) any information and/or statements or materials;
- (b) the *documents*;
- (c) any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- (d) the financial statements and annual reports of any *insured*,

requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### Subsidiary

*subsidiary* means any entity in which the *policyholder*:

- (a) holds directly or indirectly more than 50% of the voting rights;
- (b) appoints a majority of the board of directors (or equivalent in any other country); or
- (c) has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

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

### Third party

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

### Underwriter

*underwriter* means the underwriter(s), sponsor(s) or nominated advisor(s) who is designated in the *underwriting agreement*, including the partners, directors, officers and employees thereof.

### **Underwriting agreement**

*underwriting agreement* shall mean the contractual document specified in the *schedule* that specifically involves the *public offering*.

### **US claim**

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

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of, the United States of America or Canada or its territories and/or possessions.

### **US securities claim**

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

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of, the United States of America or Canada or its territories and/or possessions.

### **Wrongful act**

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

- (a) any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *company* or any matter claimed against such *insured person* solely by reason of his/her status as such, but only arising from the *public offering*;
- (b) any *underwriter* whilst acting in his/her/its respective capacity for the *company*, but only arising from the *public offering*;
- (c) the *company*, but only arising from the *public offering*;
- (d) any *controlling shareholder* whilst acting in his/her/its respective capacity, but only arising from the *public offering*; or
- (e) any *selling shareholder* whilst acting in his/her/its respective capacity, but only arising from the *public offering*.

### **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)**

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

- (a) *defence costs*;
- (b) *investigation costs*;
- (c) *prosecution costs*;
- (d) *civil or 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 *defence costs* under this extension of cover until the conduct in question has been finally established, by court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency, our written consent cannot be reasonably obtained by the applicable *insured* before any of the above heads of *financial loss* are incurred, the *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 to 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 that *insured* in the event that the *insured* 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 *securities claim* covered under this policy including but not limited to an extradition proceeding.

### 3. Crisis containment

We agree to pay *public relations expenses* to or on behalf of the *company*, solely incurred in response to a *force majeure event* by the *insured* within the first 30 days following that event.

### 4. Deprivation of assets expenses

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

### 5. Environmental mismanagement coverage

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

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

for any *environmental mismanagement claim*.

### 6. Estates, heirs, legal representatives

This policy extends to cover *financial loss* arising from any *securities 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 Insuring Clause 1. and Extension of Cover 8. 'Extended reporting period' and Extension of Cover 11. 'Investigations', on the following terms:

- (a) (i) the *financial loss* is otherwise covered by the policy; and
- (ii) our obligation to indemnify is only to the extent that such *insured person* is not lawfully indemnified by the *company*;
- (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 *financial loss* arising from 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 the *financial loss* of all *non-executive directors' claims* and *investigations* in the aggregate under this extension of cover.

### 8. Extended reporting period

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:

- (a) any *claim* made against any *insured* during such 90 day period; and
- (b) 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 (if applicable) the effective date of the change in control (whichever is the earlier).

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 (to the extent permitted by law) in respect of an *extradition 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 *extradition claim*; 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 claim* against that *insured person*.

## 10. Indemnity costs for shareholder derivative claims

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

## 11. Investigations

We will pay *investigation costs* on behalf of:

- (a) any *insured person* in respect of any *investigation* into the conduct of such *insured person* in their capacity as a *director or officer*, whether or not a *wrongful act* is alleged against such *insured person*;
- (b) the *company* in respect of any *investigation* into the affairs of the *company* whether or not a *wrongful act* is alleged.

Indemnity under this extension of cover arises only when, and is in relation only to *investigation costs* incurred after, such *insured person* is requested in writing by such *official body* to attend such *investigation*, provided that such request to attend first arises during the *period of insurance* and the *insured* notifies us in accordance with Condition 10. 'Notification'. This extension of cover shall not apply to general industry investigations or inquiries or routine regulatory inspections or inquiries.

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

## 12. Marital estates

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

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

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

## 13. Non-Disclosure and Misrepresentation waiver

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

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

(b) against a *company* where any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position) of the *company* or the holder of any equivalent position in a jurisdiction, knew the facts or matters not disclosed or misrepresented,

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

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

Nothing in this paragraph derogates from Condition 16. 'Severability and Non-Imputation'.

#### 14. Preservation / presumption of right to indemnity

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

#### 15. Prosecution costs

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

- (a) against an *official body* conducting an *investigation* wherein the *insured person* alleges that the *official body* is acting beyond power or in breach of the rules of natural justice directly in relation to matters affecting, or potentially affecting, the *insured person* in such *investigation*;
- (b) to obtain the discharge or revocation of:
  - (i) a temporary or permanent disqualification of such *insured person* from managing a corporation (including as a senior manager or responsible officer) during the *period of insurance*; or

(ii) a *judicial order* entered during the *period of insurance* imposing:

1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
2. a charge over real property or personal assets of such *insured person*;
3. a restriction of such *insured person's* liberty to a specified domestic residence or detention facility; or
4. deportation of an *insured person* following revocation of otherwise current and valid immigration status for any reason, other than such *insured person's* conviction of a crime.

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

## Exclusions

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 any *investigation*:

### 1. Bodily injury / Property damage

for *bodily injury* and/or *property damage*.

### 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 criminal, fraudulent, dishonest 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* or occupational health and safety proceeding.

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

This exclusion only applies where the conduct in question has been finally established, by court judgment or other final adjudication (including all available appeals).

For the purpose of determining the applicability of this exclusion:

- (i) no conduct or knowledge of an *insured* shall be imputed to any other *insured person*; and
- (ii) to indemnity under Insuring Clause 3., only the conduct and knowledge of any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent) of the *company* shall be imputed to the *company*.

### 3. Environmental event

based upon, arising out of or attributable to an *environmental event*; except as provided under Extension of Cover 5. 'Environmental mismanagement coverage'.

### 4. Insured vs Insured for US claims

when such *claim* is a *US claim* and is brought by, on behalf of, or at the instigation of an *insured* or any *director or officer*, provided this exclusion shall not apply to:

- (a) a *claim* brought or maintained by a liquidator, receiver administrator, deed administrator, bankruptcy trustee or administrative receiver (or the equivalent in any other country), either directly or derivatively on behalf of the *company* without the solicitation, voluntary assistance or active participation of any *director or officer* of the *company*;
- (b) a *claim* or *securities claim* in the form of 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* or *securities claim* without the solicitation, voluntary assistance or active participation of any *director or officer* of the *company*;
- (c) 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);
- (d) a *claim* brought by any former *insured person* of the *company*;
- (e) a *claim* brought by an *insured person* in their capacity as a 'whistleblower' (as that term is defined by governmental, federal, state, local or foreign law) alleging a *wrongful act* by an *insured person* in connection with a protected activity categorised by any governmental, federal, state, local or foreign law as a 'whistleblower' activity; or
- (g) *defence costs* incurred by an *insured person*.



## 5. Prior and Pending

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

- (a) litigation, *claim*, *investigation* or circumstance existing prior to the *period of insurance* that has been reported under any Directors and Officers or Management Liability policy of which this policy is a renewal or replacement or which it may succeed in time;
- (b) fact, circumstance, act or omission or *claim* disclosed in the *submission* or 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.

## 6. Prior notice

Being:

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

## 7. Professional services

alleging, arising from, based upon, attributable to or as a consequence of any *wrongful act* by the *underwriter* in the performance of, or failure to perform, professional services.

This exclusion only applies to coverage provided under Insuring Clause 2 (b).

## 8. 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*.

## Conditions

### 1. Allocation

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

- (a) between the *insured persons*, *underwriter*, *additional insureds* and any other uninsured person or entity 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
- (b) between the *insured persons*, the *company* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

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

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

While no fair and equitable allocation has been agreed or determined 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 condition. 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.

### 2. Applicable law

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

### 3. Assignment

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

#### 4. Cancellation

Without derogating from our rights in Extension of Cover 13. 'Non-Disclosure and Misrepresentation waiver', this policy may not be cancelled by us, except for non-payment of premium. The *policyholder* cannot cancel this policy.

#### 5. Confidentiality

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

- (a) the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability; or
- (b) we consent in writing to disclosure of the existence and/or terms of this policy.

#### 6. Deductible

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

- (i) a *securities claim* (other than *US securities claim*);
- (ii) a *US securities claim*;
- (iii) any *US claim* (other than a *securities claim* or *US securities claim*);
- (iv) any other *claim* (other than a *securities claim*, *US claim* or *US securities claim*);
- (v) an *investigation*.

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 *insureds* 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.

#### 7. Defence costs and Settlements

- (a) It shall be the duty of the *insureds* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim* made against any *insured*. 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 11. 'Investigations'.
- (b) With respect to any *claim* or *investigation* as may potentially be covered by this policy, we shall:
  - (i) have the right to be provided with all such information as we shall reasonably require, at the *insured's* own cost;
  - (ii) be kept fully informed as to all matters relating to or concerning the *investigation*, defence, settlement or appeal and shall have the right to receive copies of all relevant documentation relating thereto; and
  - (iii) have the right to associate effectively with the *insureds* in the defence, investigation and the negotiation of any settlement of any *claim* or *investigation*.
- (c) In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Senior Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued). The costs of such determination by Senior Counsel are to be paid by us and will not form part of the *limit of liability*.  
If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.
- (d) 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* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

## 8. Goods and Services Tax

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

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

## 9. Limit of Liability

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

- (iii) insofar as not encompassed within (i) and (ii) above, all sums payable under any of the Extensions of Cover.

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

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

All *sub-limits* of liability are part of and not in addition to the *limit of liability*.

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

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

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

## 10. Notification

The *insured* shall, as a condition precedent to our liability under this policy, give written notice to us of:

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

as soon as is reasonably practicable after the *company's* risk manager, General Counsel, Company Secretary, Chief Legal Counsel or equivalent position first becomes aware of such *claim*, or such *investigation*, but in all events no later than 90 days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

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

- (i) *claim* or any circumstance that may lead to such a *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *claim* or circumstance; or
- (ii) *investigation*, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *company* or *insured persons*, as the case may be, first become aware of the *investigation*.

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

Written notice hereunder shall be provided in writing to:

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

Or by email to:

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

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

## 11. 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 11. 'Investigations'; then
- (b) only after payment of *financial loss* has been made pursuant to Condition 11. '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 Clause 2., 3. and 4. until our obligations under Insuring Clause 1. and Extension of Cover 11. 'Investigations' are met.

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

## 12. Other insurance

To the extent permitted by the Insurance Contracts Act 1984 (Cth), if a *claim* under this policy would, but for the existence of this policy, be insured or reimbursed by:

- (a) any other valid and collectable Directors and Officers liability or Management liability policy; or
- (b) the *underwriter*; or
- (c) the *underwriting agreement*,

for *claims* against the *company*, any *insured person* or any *additional insured*, we shall only be liable for any amount beyond that collectable or indemnified under such other policy or the *underwriting agreement*.

It is further agreed that with respect to any *claim* under this policy for which coverage 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.

## 13. Plurals and Titles

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

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

#### 14. Privacy

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

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

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

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

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

#### 15. Secondary public offering

If during the *period of insurance* the *policyholder* or any *subsidiary company* plans to undergo a public offering of its *securities* other than, different from or in addition to the *public offering*, the *policyholder* may obtain a quote from us for such new public offering, provided that the *policyholder* shall provide us written notice of such public offering together with full particulars and underwriting information we required.

Any coverage that may be provided for such new public offering shall be conditioned upon the *policyholder* accepting all such terms, conditions and additional premium required by us for such coverage. Such coverage is also subject to the *policyholder* paying when due any such additional premium and an endorsement being added to this policy specifically providing coverage for such new offering.

#### 16. Severability and Non-Imputation

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

- (a) no statement in the *submission*, made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured* shall be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;
- (b) the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* shall be imputed to the *company* for the sole purpose of determining if coverage is available under Insuring Clause 2. of this policy with respect to *claims* against such *insured person*, but shall not be imputed to the *company* with respect to *claims* against other *insured persons* for the purpose of coverage under Insuring Clause 2. and/or Insuring Clause 4. in relation to the *financial loss* of that other *insured person*; and
- (c) only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position)) of the *company* shall be imputed to the *company* for the purposes of indemnity under Insuring Clause 3. and/or Insuring Clause 4. in relation to the *financial loss* of any *subsidiary*.

#### 17. 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. The *insured* shall execute all papers reasonably required and shall take all reasonable action that may be necessary to secure any and all subrogation rights of Zurich including but not limited to an action against the *company* for non-payment of indemnity to the *insureds* by the *company*.

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

**18. Territorial scope**

Coverage under this policy shall apply to *financial loss* incurred, resulting from *claims* made and *wrongful acts* occurring anywhere in the world, where legally permissible.

**19. Valuation and Foreign currency**

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

**20. 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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