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 breach committed, attempted or alleged to have been committed or attempted after the retroactive date stipulated in the schedule.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period of insurance, of any circumstance 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 as soon as reasonably practicable after the insured becomes aware of the circumstance or fact and before this policy expires, Zurich 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 circumstances 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 breaches 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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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’.

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 Insurance Group Ltd. It is one of the world’s largest insurance companies, with a global network of subsidiaries and offices in Asia Pacific as well as North America, Europe, 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.

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.

Non-disclosure or Misrepresentation
If you make a misrepresentation to us, or if you do not comply with your duty of disclosure and we issue your policy with terms and conditions that are different to the terms and conditions that would have been issued had there not been any misrepresentation, or your duty of disclosure had been complied with, then:

- we may reduce the cover provided, so that we are placed in the same position as we would have been in, had there not been any misrepresentation and your duty of disclosure had been complied with; and
- we may also cancel your policy; or
- we may treat your policy as if it never existed if the misrepresentation or your non-compliance with your duty of disclosure was fraudulent.

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

1. Insuring Clauses
We will pay to or on behalf of the insured any:

1.1 loss arising from any claim which alleges a wrongful breach and/or that the insured is liable to pay a penalty, first received by the insured and notified to us; and/or

1.2 representation costs for the insured to prepare for and attend an investigation first commenced, during the period of insurance or any extended reporting period (if applicable).

2. 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.

2.1 Advance payment of defence costs
We will advance the defence costs incurred by an insured in the defence of a claim, as they are incurred and prior to the final adjudication of the claim, where:

2.1.1 indemnity under this policy is confirmed in writing by us; or

2.1.2 without admitting indemnity, we agree to advance such defence costs.

All such payments shall be repaid to us by the insured (or where more than one insured has received such payments, by such insured severally and according to their respective interests) in the event and to the extent that the insured is not entitled to payment of such defence costs under the terms and conditions of this policy.

We will not rely on Exclusion 5.5 ‘Personal gain and dishonesty’ to refuse to advance defence costs under this extension of cover until the conduct in question has been finally established by a judgment or other final adjudication, including by available appeals.

2.2 Continuous cover
If the insured has innocently neglected, to notify a circumstance which could give rise to a claim or wrongful breach or to an investigation or workplace audit during the period of an earlier policy(ies) of the same type as this one issued by another insurer, then provided that the insured has maintained uninterrupted insurance of the same type since the expiry of that earlier policy(ies) we will, notwithstanding Exclusion 5.7 ‘Prior and pending’, permit the matter to be reported under this policy and indemnify the insured in respect of any claim arising from the matter during the period of insurance on the condition that:

2.2.1 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;

2.2.2 neither the claim nor the circumstance which could give rise to a claim or wrongful breach, nor the investigation nor workplace audit has been earlier notified to us or at any time to an insurer under any policy;

2.2.3 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 claim or the circumstance which could give rise to a claim or wrongful breach or the investigation or workplace audit, but only where such earlier policy(ies) affords no broader coverage; and

2.2.4 there has been no fraudulent non-disclosure or misrepresentation to us.
2.3 Crisis containment

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

2.3.1 any covered claim against the insured first made during the period of insurance or the extended reporting period (if applicable);

2.3.2 any investigation for which the insured is entitled to cover for representation costs.

However:

(i) the insured must notify us within 30 days of first becoming aware that the reputation of the parties noted in 2.3.1 and 2.3.2 are being brought into question and provide full written details outlining the circumstances surrounding the event; and

(ii) we must have given prior written consent to retain the services of such public relations firm or consultant or crisis management firm; and

(iii) the sub-limit for this extension of cover is $50,000 or the amount specified in the schedule, for all public relations expenses payable and in the aggregate for any one period of insurance.

2.4 Estates and legal representatives

We agree to cover the estate, heirs, legal representatives or assigns of an officer or employee that is incapable of managing his or her own affairs by reason of mental disorder or other incapacity, or is deceased, insolvent or bankrupt, to the same extent as any claim made against such officer or employee.

2.5 Extended reporting period

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

2.5.1.1 any written notice that a workplace audit is to be conducted by a workplace regulatory authority during such 90 day period; or

2.5.1.2 any claim made against any insured during such 90 day period; and

2.5.1.3 any investigation where the legal requirement on any insured to attend first arises during such 90 day period,

but only with respect to any wrongful breach 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).

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

2.5.2.1 12 months; or

2.5.2.2 24 months,

after the expiry date of the period of insurance for:

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

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

but only with respect to any wrongful breach 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).

This clause 2.5.2 does not apply to the cover under Extension of Cover 2.10 ‘Workplace audits’.
Extension of Cover 2.5 ‘Extended reporting period’ 2.5.2 is subject to such terms and conditions as we may reasonably impose. Further and subject to Extension of Cover 2.5 ‘Extended reporting period’ 2.5.3 below, cover is only available under this extension of cover if the applicable additional premium has been paid by the policyholder, as required by us.

If the policyholder selects an extended reporting period as described above, the policyholder shall not have a right to cover under Extension of Cover 2.5 ‘Extended reporting period’ 2.5.1 above.

2.5.3 The rights contained in Extension of Cover 2.5 ‘Extended reporting period’ 2.5.3 shall terminate:

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

(ii) unless as a condition precedent to the extended cover under Extension of Cover 2.5 ‘Extended reporting period’ 2.5.2 above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the extended reporting period shall be deemed fully earned at its commencement and non-refundable; and

(iii) immediately upon the effective date of any Statutory Liability Insurance contract of insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under Extension of Cover 2.5 ‘Extended reporting period’ 2.5.1.

2.5.4 The insured agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, limit of liability or other terms, conditions or exclusions) this does not constitute a refusal by us to renew.

2.6 Late arising extensions

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

This extension of cover shall not apply to any policyholder:

2.6.1 who is under financial impairment;

2.6.2 whose policy is operating within an extended reporting period as per Extension of Cover 2.5 ‘Extended reporting period’; or

2.6.3 which has advised us of a change in control as per Condition 6.5 ‘Change in control’.

2.7 Outside directorship

We shall pay on behalf of the officer or employee, subject to the terms and conditions of this policy, a loss arising from any claim or representation costs arising from any investigation in respect of any outside directorship held by such officer or employee.

Provided that:

2.7.1 this extension of cover only applies if the outside directorship is listed in the schedule;

2.7.2 such indemnity shall not be extended to the outside organisation in which such outside directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and

2.7.3 the coverage afforded by this extension shall not apply to any part of any loss covered by any indemnity permitted or required to be paid by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.
2.8 Subsidiary – newly created / acquired

We agree to extend cover to include any subsidiary acquired or created during the period of insurance by the policyholder. The following conditions apply to this extension:

2.8.1 the normal business of the new subsidiary is similar to the business described in the schedule;

2.8.2 cover will only apply in respect of any investigation, workplace audit or claim that would otherwise be covered under this policy where the wrongful breach or conduct was committed or alleged to have been committed after the date the subsidiary is acquired or created by the policyholder;

2.8.3 cover will apply automatically for a period of 90 days after the acquisition or creation of the subsidiary following which it will terminate. We may, at our sole discretion, extend coverage to such subsidiary, beyond such 90 days, if during such 90 day period the policyholder shall:
   2.8.3.1 notify us in writing of the acquisition of such entity;
   2.8.3.2 provide us with full underwriting information as we may require; and
   2.8.3.3 agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such subsidiary.

2.8.4 In the event that no notification is provided to Zurich, this Extension of Cover shall not apply.

2.9 Subsidiary – past

Coverage shall extend to those entities which were once a subsidiary but have since ceased to be a subsidiary. Coverage in this respect shall only apply to claims that would otherwise be covered under this policy where the wrongful breach was committed or alleged to have been committed by an insured, between the date of the acquisition or creation of the subsidiary by the policyholder and the date such subsidiary ceased to be a subsidiary, subject always to the retroactive date specified in the schedule.

2.10 Workplace audits

We will pay for the costs necessarily and reasonably incurred by the policyholder in connection with a workplace audit which commenced and was notified to us during the period of insurance.

Provided that:

2.10.1 the policyholder gives us written notice that a workplace audit is to be conducted by a workplace regulatory authority within 30 days of the policyholder being advised. The written notice to us must include a copy of the workplace audit notice from the workplace regulatory authority that clearly identifies the type of workplace audit to be conducted; or

2.10.2 where a workplace audit has commenced in the absence of any notification document being issued by the workplace regulatory authority, the policyholder must provide us with details of the date of the first visit by the officer of the workplace regulatory authority together with the officer’s contact details within 30 days of the first visit; and

2.10.2 we will only pay the policyholder once we receive final written confirmation to the policyholder from the workplace regulatory authority that the workplace audit has been completed; and

2.10.3 the sub-limit for this extension of cover is $25,000 or the amount specified in the schedule, for all workplace audit costs payable and in the aggregate for any one period of insurance.
3. Definitions

When used in this policy, its schedule and its endorsements, the following definitions shall apply:

3.1 Act

Act means:

3.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of a Parliament of a State or Territory of the Commonwealth of Australia, including any subordinate or delegated legislation such as regulations made under those Acts; or

3.1.2 any Act of the Parliament of New Zealand, including any subordinate or delegated legislation such as regulations made under those Acts; and

3.1.3 any amendment, consolidation or re-enactment of any of the above Acts or subordinate or delegated legislation.

3.2 Act of terrorism

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

3.3 Business

business means the business conducted by the policyholder as described in the schedule.

3.4 Change in control

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

3.4.1 any person, entity or group:

3.4.1.1 acquires more than 50% of the policyholder’s share capital;

3.4.1.2 acquires the majority of the voting rights in the policyholder;

3.4.1.3 assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the policyholder;

3.4.1.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the policyholder, or

3.4.1.5 merges with the policyholder, such that the policyholder is not the surviving entity; or

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

3.5 Claim

claim means any written notice from a regulatory authority, received by the insured which alleges a wrongful breach and/or that the insured is liable to pay a penalty.

3.6 Deductible

deductible means in respect of:

3.6.1 the policyholder, the amount shown in the schedule;

3.6.2 officers and employees, the amount shown in the schedule,

which shall be responsibility of the policyholder to pay in respect of each loss or other expense for which cover is otherwise provided under this policy.
3.7 **Defence costs**

defence costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any officer or employee of the policyholder, the cost of their time or the costs or overhead of the policyholder), incurred by the insured in the investigation, defence, settlement or appeal of 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 insured to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a claim.

Provided that where proceedings are commenced to impose a penalty and those proceedings are also in respect of other matters, then we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

3.8 **Employee**

employee means any past, present or future natural person being in the regular service or seasonal or casual or temporary service or under a contract of service or apprenticeship, traineeship, or work experience of the policyholder in the ordinary course of the policyholder’s business and whom the policyholder compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service during or prior to the commencement of the period of insurance.

The definition of employee shall not include independent contractors or agents, nor their respective employees.

3.9 **Extended reporting period**

extended reporting period means the relevant period of cover arising or offered under Extension of Cover 2.5 ‘Extended reporting period’.

3.10 **Financial impairment**

financial impairment means the status of the policyholder resulting from:

3.10.1 the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator or similar official to take control of, supervise, manage or liquidate the policyholder;

3.10.2 the appointment by or on behalf of the policyholder of administrators; or

3.10.3 the policyholder being in receivership or liquidation.

3.11 **Insured**

insured means, as applicable:

3.11.1 the policyholder; or

3.11.2 any officer whilst acting in the performance of their duties to the policyholder; or

3.11.3 any employee whilst acting in the performance of their employment by the policyholder.

3.12 **Investigation**

investigation means:

3.12.1 a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by any regulatory authority:

3.12.1.1 where the insured receives written notice which requires or directs the insured to attend before or produce documents to, or answer questions by or attend interviews with, the regulatory authority; or

3.12.1.2 identifies the insured as a target of the investigating regulatory authority, whether or not a wrongful breach is alleged; or

3.12.2 a coronial inquest, royal commission, special commission of inquiry, or other formal legal proceedings ordered or commissioned by any regulatory authority.
3.13 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.

3.14 Loss

Loss means any penalty and defence costs which an insured becomes legally obligated to pay on account of any covered claim or any representation costs which an insured becomes legally obligated to pay on account of any covered investigation.

3.15 Officer

Officer means any past, present or future director or officer (as defined by the Corporations Act 2001 (Cth) or the Companies Act 1993 (New Zealand) of the policyholder, but excluding:

3.15.1 a receiver, receiver and manager, judicial manager, liquidator, administrator, trustee or other person administering a scheme of company arrangement between the corporation or any other person or persons; or

3.15.2 any company, organisation or other body corporate.

3.16 Outside directorship

Outside directorship means an executive position held by an officer or employee in connection with the business at the specific request of the policyholder in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the policyholder.

3.17 Penalty

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

3.17.1 amounts payable as compensation or restitution;

3.17.2 compliance, remedial, reparation or restitution costs, apart from costs necessarily and reasonably incurred under Extension of Cover 2.10 ‘Workplace audits’;

3.17.3 damages, including any exemplary or punitive damages;

3.17.4 consequential loss, economic or otherwise;

3.17.5 legal costs and associated expenses;

3.17.6 penalty the insurance of which is prohibited at law.

Notwithstanding clause 3.17.5, we will pay any reasonable legal costs and associated expenses payable by the insured to any regulatory authority upon the imposition of a penalty covered by this policy. Provided that where the proceedings that lead to the imposition of the penalty also include proceedings in respect of any of the matters set out in clauses 3.17.1 to 3.17.4, we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in 3.17.1 to 3.17.4.

3.18 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.

3.19 Policyholder

Policyholder means the legal entity as specified in the schedule and/or any subsidiary which was a subsidiary prior to the commencement of the period of insurance.
3.20 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 *policyholder* 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 a *claim* or *investigation*.

3.21 Regulatory authority

*regulatory authority* means a person or entity appointed, constituted or acting under a delegation pursuant to any *Act* for the purposes of enforcement of such *Act* or another *Act*.

3.22 Representation costs

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

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

3.23 Retroactive date

*retroactive date* means the date shown on the *schedule*. However, unless otherwise agreed in writing by us, such date in respect of any entity acquired or created by the *policyholder* shall be the date of acquisition or creation of that entity by the *policyholder* or the date shown the *schedule*, whichever is the later date.

3.24 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.

3.25 Senior officer

*senior officer* means any past, present or future director, chief executive officer, chief financial officer or company secretary of the *policyholder*.

3.26 Submission

*submission* means:

3.26.1 any information and/or statements or materials;

3.26.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or

3.26.3 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.

3.27 Subsidiary

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

3.27.1 holds directly or indirectly more than 50% of the voting rights;

3.27.2 appoints a majority of the board of directors (or equivalent in any other country); or

3.27.3 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 Companies Act 1993 (NZ) (as applicable) or the applicable Australian or New Zealand accounting standard.
3.28 **Territorial limits**

*territorial limits* means anywhere in Australia and/or New Zealand.

3.29 **Workplace audit**

*workplace audit* means those audits undertaken by a *workplace regulatory authority*.

3.30 **Workplace regulatory authority**

*workplace regulatory authority* means a person or entity appointed, constituted or acting under a delegation pursuant to any Commonwealth, State or Territory occupational or workplace health and safety legislation or equivalent Act for the purposes of enforcement of such Act or another Act.

3.31 **Wrongful breach**

*wrongful breach* means any act, error or omission which occurs:

3.31.1 in connection with the *business*;

3.31.2 within the *territorial limits*; and

3.31.3 after the *retroactive date*,

whereby:

(i) the insured contravenes an *Act* or is involved in the contravention of an *Act*;

(ii) the insured commits an offence pursuant to an *Act*; or

(iii) such conduct is prohibited under an *Act*.

4. **Limit of Liability**

All loss arising out of:

4.1 any one *wrongful breach* or interrelated *wrongful breaches*; and/or

4.2 all interrelated *representation costs* arising from any *investigation* or a *workplace audit*,

are deemed to be one *loss* and such *loss* shall be deemed to have originated on the earliest date at which a *claim* is made against the insured.

Our liability under this policy applies only to that part of each *loss* in excess of the *deductible*.

Our liability under this policy in respect of all *loss* arising out of all *claims* covered by this policy will not exceed the *limit of liability* in the schedule.
5. Exclusions

We shall not be liable under this policy to provide cover for any loss or costs in connection with any investigation or any claim:

5.1 Asbestos

for liability of whatsoever nature in connection with, directly or indirectly caused by or contributed to by or arising from asbestos or asbestos products in whatever form or quantity.

5.2 Certain Acts

5.2.1 based upon, attributable to or in consequence of any contravention of sections 182, 183, 588G, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections; or

5.2.2 based upon, attributable to or in consequence of any contravention of sections 78, 80, 83 or 89 (3) (b) of the New Zealand Commerce Act 1986 and any amendment, consolidation or re-enactment of any of those sections; or

5.2.3 a wrongful breach of any of the following Australian Acts: Fair Trading Act 1985 (Vic), Fair Trading Act 1987 (NSW), Fair Trading Act 1987 (SA), Fair Trading Act 1987 (WA), Fair Trading Act 1989 (Qld), Fair Trading Act 1990 (Tas), Fair Trading Act 1992 (ACT), Consumer Affairs and Fair Trading Act 1996 (NT), Trade Practices Act 1974 (Cth), Competition and Consumer Act 2010 (Cth) and any amendment, consolidation or re-enactment of any of those Acts. However where the breach is not wilful, intentional or deliberate, 5.2.3 shall not apply with respect to loss arising from any claim made against an officer or employee; or

5.2.4 a wrongful breach of any of the following New Zealand Acts: Arms Act 1983 (NZ), Aviation Crimes Act 1972 (NZ), Crimes Act 1961 (NZ), Criminal Investigations (Blood samples) Act 1995 (NZ), Criminal Proceeds (Recovery) Act 2009 (NZ), Land Transport (Road Safety and Other Matter) Amendment Act 2001 (NZ), Misuse of Drugs Act 1975 (NZ), Summary Offences Act 1981 (NZ), Transport (Vehicle and Driver Registration and Licensing) Act 1986 (NZ) and any amendment, consolidation or re-enactment of any of those Acts. However this exclusion shall only apply where the subject conduct has been established by a judgment or other final adjudication.

5.3 Daily continuing offences and other costs

5.3.1 for the cost or payment of any enforcement order, remedial order or compliance order;

5.3.2 for the cost or payment of any fine imposed in relation to a daily continuing offence where the penalty is imposed in relation to a period of time after the insured first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that offence.

5.4 Knowledge

based upon, attributable to or in consequence of, any loss or part of any loss which is attributable to the period after the insured knew that its conduct was a wrongful breach.

5.5 Personal gain and dishonesty

based upon, attributable to or in consequence of any insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled.

However this exclusion shall only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the insured.
5.6 Personal grievances
based upon, attributable to or in consequence of, any contract of service with any current, former or prospective senior officer or an employee, including any personal grievance or similar action by a senior officer or an employee.

However this exclusion shall only apply to any investigation or inquiry by any relevant workplace regulatory authority or by the Department of Labour pursuant to the Health and Safety in Employment Act 1992 (NZ).

5.7 Prior and pending
5.7.1 made, threatened or in any way intimated against the insured prior to the period of insurance;
5.7.2 arising from any circumstances of which the insured had become aware prior to the period of insurance and which the insured knew (or ought reasonably to have known) to be circumstances which may give rise to a claim;
5.7.3 arising from any wrongful breach where the insured knew (or ought reasonably to have known) prior to the period of insurance that there had been such a wrongful breach.

5.8 Prior notice
arising from any matter disclosed to any Insurer (including us) prior to the period of insurance as either a claim or circumstance which may give rise to a claim against the insured or any investigation or circumstance which may give rise to an investigation or workplace audit.

5.9 Professional services
for actual or alleged act or omission, including but not limited to any error, misstatement, misleading statement, neglect, breach of trust or breach of duty committed, attempted or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services to a third party.

5.10 Radioactive contamination
5.10.1 for any ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission; or
5.10.2 for any nuclear weapons material.

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

5.12 Vehicle operation
based upon, attributable to or in consequence of:
5.12.1 a wrongful breach relating to the regulation of road rules for drivers of vehicles;
5.12.2 a wrongful breach relating to the regulation of air or marine traffic.

5.13 War and/or Acts of terrorism
caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:
5.13.1 any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
5.13.2 any act of terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.
5.14 Wilful and intentional breaches
based upon, attributable to or in consequence of:

5.14.1 any wilful, intentional or deliberate wrongful breach by the insured;
5.14.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act by the insured;
5.14.3 any wrongful breach caused by gross negligence or recklessness by the insured;
5.14.4 a dishonest, fraudulent or malicious act or omission of the insured.

However this exclusion shall only apply where the subject conduct has been established by a judgement or other final adjudication.

6. Conditions

6.1 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.

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

6.3 Cancellation
6.3.1 The policyholder may cancel this policy by giving notice in writing to us at any time.
6.3.2 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 30 days from the time of receipt of notification by the insured.
6.3.3 After cancellation by the insured a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.
6.3.4 After cancellation by us a refund of premium will be allowed pro rata for the unexpired period of insurance.

6.4 Change in circumstances
The insured shall give written notice as soon as possible to us of any change in any of the facts or circumstances existing at the commencement of this policy which materially changes the nature or extent of the risk insured by this policy.

6.5 Change in control
If during the period of insurance the policyholder undergoes a change in control, then the cover provided by this policy shall only apply in respect of investigations or workplace audits, wrongful breaches or other conduct occurring prior to the effective date of such change in control. The policyholder shall give us written notice of such change in control as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a change in control, if the policyholder cancels this policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.
6.6 Confidentiality
The existence and terms of this policy shall be confidential as between the policyholder and us and shall not be published, disclosed or otherwise communicated except where:

6.6.1 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

6.6.2 we consent in writing to disclosure of the existence and/or terms of this policy.

6.7 Defence costs, settlements and allocation

6.7.1 It shall be the duty of Zurich and not the insured to take all reasonable steps to defend a claim and the insured is required not to do anything to prejudice their and/or our position.

6.7.2 With respect to any claim or investigations or workplace audits which may potentially be covered by this policy, we shall:

6.7.2.1 have the right to be provided with all such information as we may reasonably require, at the insured’s own cost;

6.7.2.2 be kept fully informed as to all matters relating to or concerning the investigation or workplace audit, defence, settlement or appeal and shall have the right to receive copies of all relevant documentation relating thereto; and

6.7.2.3 have the right to associate effectively with the insureds in the defence, investigation and the negotiation of any settlement of any claim or investigation or workplace audit.

6.7.3 The insured shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any defence costs or representation 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 and defence costs and representation costs that have been consented to by us in writing shall be recoverable as loss under the terms of this policy (other than as covered under Extension of Cover 2.1 ‘Advance payment of defence costs’).

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 loss) for an amount not exceeding the applicable deductible, then our consent shall not be required for such disposition.

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

6.7.4.1 between the insured and any other uninsured person or entity (including the policyholder) where the 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 and those other persons or entities; and/or

6.7.4.2 between the insured, the policyholder 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.

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

6.8 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.

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

6.10 Notification
6.10.1 The insured shall as a condition precedent to the insured’s right to be indemnified under this policy give us as soon as reasonably practical notice in writing:

6.10.1.1 of any claim, made against the insured or any circumstances that may lead to such a claim; or
6.10.1.2 any written requirements that an insured or the policyholder attend an investigation or workplace audit being conducted or any circumstance that may lead to such a request, irrespective of whether the loss is likely to be within or above the amount of the deductible.

6.10.2 If a claim is made against the insured during the period of insurance and the insured notifies us of such claim, investigation or workplace audit within 30 days after the expiry of the period of insurance, such claim, investigation or workplace audit shall be deemed to have been notified to us during the period of insurance.

6.10.3 If during the period of insurance the insured becomes aware of any circumstances which may subsequently give rise to a claim, investigation or workplace audit against the insured and the insured gives written notice of such circumstances to us during the period of insurance (or within 30 days after the expiry of the period of insurance), then any claim, investigation or workplace audit arising from the circumstances subsequently made against the insured shall be deemed to be a claim, investigation or workplace audit made against the insured and notified to us during the period of insurance.

6.10.4 The insured shall upon our request and at its own expense:

6.10.4.1 provide all information and assistance as may be required;
6.10.4.2 give a complete and truthful account of the facts relevant to any claim, investigation or workplace audit;
6.10.4.3 supply all documents and other evidence relevant to the claim, investigation or workplace audit; and
6.10.4.4 obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,

and in respect of a claim made against:

6.10.4.5 the insured, the insured shall, upon our request and at its own expense ensure that a senior officer attends and if necessary gives evidence, on behalf of the insured, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against the insured;

6.10.4.6 any officer or employee, the officer or employee shall, upon our request and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against such officer or employee.

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.

6.11 Other insurance
In the event that a policy of insurance or policies of insurance are listed in the schedule, those policies of insurance will act as primary insurance and this policy will only apply in excess of such policy(ies) of insurance.

The insured shall notify us immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks covered by this policy.

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

6.12.1 headings are descriptive only, not an aid to interpretation;

6.12.2 singular includes the plural, and vice versa;

6.12.3 the male includes the female and neuter;

6.12.4 all references to specific legislation include similar legislation in any jurisdiction in respect of which a claim is made; and

6.12.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

6.13 Preservation
Any provision of this policy which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.
6.14 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, contact us by telephone on 132 687 or email us at Privacy.Officer@zurich.com.au.

6.15 Reasonable care

The policyholder shall take reasonable care at all times to:

6.15.1 comply and ensure that its officers, employees, agents and contractors comply with the provisions of any Act; and

6.15.2 maintain all premises, fittings and plant in a safe and sound condition.

6.16 Severability and Non-Imputation

We agree that where the policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

6.16.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth);

6.16.2 made a misrepresentation to us before this policy was entered into;

6.16.3 failed to comply with any term or condition of this policy; and/or

6.16.4 acted in a manner which gives rise to the application of an exclusion of this policy,

shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this policy.

Provided that such remaining party or parties shall:

(i) not have participated in and have had no prior knowledge of any such conduct; and

(ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise us in writing of all known facts in relation to such conduct.

6.17 Subrogation

If any payment is made under this policy, we shall be subrogated to the extent of such payment to all of the insured’s rights of recovery. In such case the insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to effectively bring suit in the name of the insured.

6.18 Territorial scope

Coverage under this policy is limited to loss incurred or an investigation or workplace audit carried out in Australia and/or New Zealand only.
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