5.15 Order of payments ........................................................................................................................................ 28
5.16 Order of recoveries ...................................................................................................................................... 28
5.17 Other insurance and indemnification ........................................................................................................ 28
5.18 Plurals and headings ................................................................................................................................... 28
5.19 Severability and non-imputation ............................................................................................................... 29
5.20 Subrogation ................................................................................................................................................ 29
5.21 Valuation and foreign currency ............................................................................................................... 29
5.22 Waiver of privilege ...................................................................................................................................... 29

6.  **Worldwide cover and global liberalisation**
   6.1 Worldwide cover ....................................................................................................................................... 30
   6.2 Global liberalisation .............................................................................................................................. 30
   6.3 International program policies ............................................................................................................ 30
Welcome to Zurich

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

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

Important information
This is a ‘Claims Made and Notified’ insurance policy. It only provides cover if:

1. A claim is made against the insured, by some other person and notified to us, during the period when the policy is in force; and
2. The claim arises out of an occurrence which takes place after the continuity date stipulated in the policy schedule.

Duty of Disclosure
Before the insured enters into a contract of general insurance with us, the insured has a duty at common law to disclose to us every matter they know, or could reasonably be expected to know that a prudent insurer would want to take into account in deciding whether to insure the insured and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The insured has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

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

Non-disclosure or Misrepresentation
If the insured makes a misrepresentation to us, or if they do not comply with this duty of disclosure we may, subject to policy terms and conditions, treat the policy as if it never existed.

Our contract with you
This policy is a contract of insurance between the policyholder and Zurich and contains all the details of the cover that we provide.

The policy is made up of:

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

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

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.
Subject to payment of the premium set out in the schedule, we agree with the insured to provide insurance in accordance with the terms, conditions and exclusions of this policy.

1. Insuring clauses

1.1 Directors and Officers liability cover
We will pay to or on behalf of an insured person any non-indemnified financial loss and pre-claim costs which arises from a claim made against such insured person.

1.2 Company reimbursement cover
We will pay to or on behalf of the company any indemnified financial loss of an insured person which arises from a claim made against such insured person.

1.3 Company securities claims cover
We will pay to or on behalf of the company any financial loss which arises from a securities claim made against the company.

1.4 Outside entity executive excess cover
We will pay to or on behalf of:

1.4.1 an outside entity executive any non-indemnified financial loss and pre-claim costs; or

1.4.2 the company any indemnified financial loss,

which arises from a claim made against such outside entity executive.

Without detracting from the operation of condition 5.17 ‘Other insurance and indemnification’ and condition 6.3.1 ‘Non-aggregation of limits of liability’, this coverage is available only as specific excess after exhaustion of any indemnification provided by an outside entity; and excess after exhaustion of any other applicable, valid and collectible Directors and Officers Liability policy or Management Liability policy.

In the event that such other Directors and Officers Liability policy or Management Liability policy is provided by us or any part of the Zurich Insurance Group (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then our maximum aggregate limit of liability for all financial loss under this policy, as respects such cover, shall be reduced by the amount of the limit of liability (as set forth on the policy Schedule) of the other Zurich policy provided to such outside entity.

1.5 Investigation costs cover
We will pay to or on behalf of:

1.5.1 an insured person any investigation costs which arise from an investigation, to the extent that such investigation costs are non-indemnified financial loss;

1.5.2 the company for investigation costs which arise from an investigation, to the extent that such investigation costs are indemnified financial loss.

This policy only covers claims or investigations first made during the period of insurance or the extended reporting period, if applicable.
2. Extensions

We agree to extend cover in accordance with the following extensions, subject to the terms, conditions and exclusions of this policy, unless expressly stated otherwise. No extension increases our limit of liability, unless expressly stated otherwise.

2.1 Additional limits for directors or officers and outside entity executives

Each director or officer and outside entity executive is entitled to an additional limit of liability in respect of non-indemnified financial loss up to the amount specified as the ‘Additional limit per director or officer and outside entity executive’ in the schedule, subject to the maximum aggregate amount specified as the Additional limit in the aggregate in the schedule.

This extension applies only in excess of and only after:

2.1.1 the total exhaustion of the limit of liability of this policy; and

2.1.2 the total exhaustion of 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; and

2.1.3 any other policy entered into by or effected on behalf of the director or officer or outside entity executive or under which the director or officer or outside entity executive is a beneficiary; and

2.1.4 all other indemnification for financial loss available to the director or officer or outside entity executive.

The insured must notify us of the existence of any other insurance policy issued as an excess policy above this policy and provide details of it as soon as reasonably practical.

2.2 Company reputation cover

We will pay to or on behalf of the company any company reputation protection expenses.

The maximum that we will pay in the aggregate for company reputation protection expenses is the ‘Company reputation protection expenses’ sub-limit of liability specified in the schedule.

2.3 Continuous cover

Notwithstanding exclusion 4.4 ‘Prior and pending’, and subject to condition 5.13 ‘Non-disclosure and misrepresentation waiver’, we will pay financial loss which arises from any claim or investigations first made against an insured during the period of insurance arising from a prior known fact, provided always that:

2.3.1 the insured has maintained without interruption, Directors’ and Officers Liability insurance from the continuity date to the present date; and

2.3.2 neither the claim nor the prior known fact has been notified to us earlier or to any other insurer under any policy at any time; and

2.3.3 cover under this extension will be pursuant to the terms, conditions, and exclusions of the policy in force at the time the insured first became aware of the prior known fact, but only where such earlier policy affords no greater or wider cover in respect of the claim than the provisions of this policy.

2.4 Emergency costs and expenses

We agree, in respect of a claim, personal reputation crisis or company crisis and prior to final adjudication or finalisation of the claim, or resolution of the personal reputation crisis or company crisis, unless or until we have denied indemnity, to pay defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses and company reputation protection expenses in advance as they are incurred by an insured.

We will not rely on either exclusion 4.2 ‘Conduct’ or exclusion 4.4 ‘Prior and pending’ to deny indemnity or to refuse to advance such costs and expenses until the matter in question has been finally established by a court judgment or other final non-appealable adjudication.
If our prior written consent to such costs and expenses cannot reasonably be obtained by the insured, the insured may incur them without our prior written consent for a period of up to thirty (30) days from the date on which they were first incurred.

The maximum that we will pay in the aggregate for any such costs and expenses incurred without our prior written consent is the ‘Emergency costs and expenses’ sub-limit of liability specified in the schedule.

Any such costs and expenses advanced by us to an insured shall be repaid by that insured in the event that the insured is not entitled to the payment of those costs and expenses under this policy.

2.5 Environmental mismanagement and pollution

We will pay to or on behalf of:

2.5.1 any insured person any non-indemnified financial loss which arises from an environmental mismanagement claim;

2.5.2 any company for indemnified financial loss which arises from an environmental mismanagement claim; and

2.5.3 the company for financial loss which arises from a securities claim resulting from an environmental event pursuant to Insuring Clause 1.3.

2.6 Extended reporting period (ERP)

2.6.1 Non-renewal

If the policy is not renewed by us or any other insurer, the policyholder will be entitled to an extended reporting period:

(a) of ninety (90) days at no additional premium, automatically; or

(b) of twelve (12) months at the additional premium required by us.

The entitlement under (b) above will lapse unless the policyholder provides written notice of its election to take it up within thirty (30) days after the expiry of the period of insurance.

2.6.2 Change in control

In the event of a change in control, the policyholder may purchase an extended reporting period of up to eighty four (84) months to commence immediately following the expiry date of the period of insurance. The policyholder must make a written request for such extended reporting period no later than thirty (30) days after the change in control and pay the additional premium required (less any unearned premium for this policy).

2.6.3 Insured person ERP election

If the policyholder is entitled to but does not exercise an extended reporting period as described in 2.6.1 or 2.6.2 above, then any insured person will have the right to elect an extended reporting period of up to eighty four (84) months. The extended reporting period elected will only apply to financial loss of the insured persons who elected such extended reporting period arising from claims or investigations against such insured persons, and will not apply to:

(a) any cover for the company;

(b) any cover for any other insured; or

(c) indemnified financial loss.

Only one extended reporting period will apply to all insured persons (combined) who elect the extended reporting period under this extension.

The right of election under this extension will lapse unless written notice of such election is given by the insured person to us within thirty (30) days after the policyholder’s right to exercise the extended reporting period has expired. This extension for each insured person is conditional upon the insured persons paying the applicable additional premium for the extended reporting period within ninety (90) days.
2.6.4 Unlimited ERP for retired/resigned directors and officers

If any director or officer retires or resigns from all of their positions as director or officer during the period of insurance or the period of any other previous Directors and Officers Liability insurance policy we issued to the policyholder of which this policy is a continuous renewal; and this policy:

(a) is not renewed or replaced; or

(b) is renewed or replaced but the renewal or replacement policy does not specifically provide cover for such director or officer,

then such retired or resigned director or officer shall be entitled to an extended reporting period of unlimited duration at no additional premium.

This extension will not apply to any directors or officers who resigned or retired their positions with the company by reason of or after a change in control.

2.7 Indemnity costs for shareholder derivative claims

If the company is ordered by a court to pay the costs of claimants pursuing a derivative action against any insured persons (hereinafter ‘indemnity costs for shareholder derivative claims’) then we will pay such costs to or on behalf of the company, provided that such derivative action is a claim otherwise covered under this policy.

2.8 Insured persons’ protection cover

We will pay to or on behalf of any insured person (or the company to the extent that these costs and expenses are indemnified financial loss) any:

2.8.1 asset and liberty protection costs and prosecution costs;

2.8.2 extradition costs which arise from any extradition claim made against such insured person;

2.8.3 personal expenses; and

2.8.4 personal reputation protection expenses arising from a personal reputation crisis.

2.9 Joint venture

We will pay to or on behalf of any insured person any non-indemnified financial loss (and to or on behalf of the company for indemnified financial loss) in respect of any claim made against an insured person arising from any joint venture of the company.

This extension will not apply to any US Claim brought by or on behalf of any joint venture party(ies) or any vehicle established to conduct, control or manage such joint venture.

2.10 Late arising extensions

If during the period of insurance we:

2.10.1 issue a new version of our Directors and Officers Liability Insurance policy in the country where the policyholder is incorporated (as specified in the schedule); or

2.10.2 make available a standard endorsement providing enhancements of cover to the current version of our Directors and Officers Liability Insurance policy to our clients in the country where the policyholder is incorporated (as specified in the schedule) for no additional premium,

then the policyholder is entitled to the benefit of, but is not obliged to accept, such new version or standard endorsement from the date it becomes available, subject to all underwriting information or particulars as we may require.

This extension shall not apply:

(i) in the event of financial impairment at the time such endorsement becomes available;

(ii) during any extended reporting period under extension 2.6; or

(iii) in the event of a change in control before or at the time such endorsement becomes available.
2.11 Runoff cover for outside entity executives

If an insured person ceases to act as an outside entity executive of an outside entity at any time prior to or during the period of insurance, then cover under this policy shall continue in respect of any claim first made against such outside entity executive and notified to us during the period of insurance or extended reporting period (if applicable) but only in respect of wrongful acts or conduct:

2.11.1 committed prior to the date such insured person ceased to be such outside entity executive; and

2.11.2 committed during the time such insured person was such outside entity executive; and

2.11.3 otherwise covered under this policy.

2.12 Runoff cover for past subsidiaries

If an entity ceases to be a subsidiary at any time prior to or during the period of insurance, then cover under this policy shall continue to apply with respect to any claim made against such subsidiary and any insured person thereof first brought during the period of insurance or the extended reporting period (if applicable), but only in respect of wrongful acts or conduct:

2.12.1 committed prior to the date such entity ceased to be a subsidiary; and

2.12.2 committed during the time such entity was a subsidiary; and

2.12.3 otherwise covered under this policy.

2.13 Tax liability

We will pay to or on behalf of an insured person his or her personal liability for the unpaid taxes of the company due to the company’s financial impairment, except for any superannuation guarantee charge. Provided that we shall not cover any loss arising from the commission of an insured person’s dishonest or fraudulent act or omission or any intentional violation or breach of any law or regulation.

2.14 Workplace health and safety

Notwithstanding exclusion 4.1 ‘Bodily injury / property damage’, we will pay to or on behalf of an insured person any defence costs which arise from any claim by an official body against such insured person or investigation costs in respect of an investigation in relation to any alleged breach of workplace health and safety laws, to the extent permitted by law. This extension includes defence costs in relation to any corporate manslaughter proceeding.

3. Definitions

For the purposes of this policy:

3.1 Asset and liberty protection costs

Asset and liberty protection costs mean reasonable and necessary fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) by an insured person in defending a deprivation of asset and liberty proceeding against such insured person.

3.2 Associated company

Associated company means a company or legal entity in respect of which, at the commencement of the period of insurance, the policyholder owns, directly or indirectly, no more than 50% of the issued share capital or voting rights representing the present right to vote for the election of directors, but is not a subsidiary.

3.3 Bodily injury

Bodily injury means bodily injury, sickness, disease or death of any person resulting therefrom, and shall include mental anguish or emotional distress.
3.4 Change in control

*change in control* means an event or events occurring, with the result that any person, entity or group:

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

3.4.2 acquires the majority of the voting rights in the *policyholder*;

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

3.4.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or

3.4.5 merges with the *policyholder*, such that the *policyholder* is not the surviving entity.

3.5 Civil or bail bond expenses

*civil or bail bond expenses* means a reasonable fee or premium 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* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

3.6 Claim

*claim* means:

3.6.1 (a) a written demand for monetary damages or non-monetary or injunctive relief;

(b) a civil, administrative, regulatory or arbitration/mediation proceeding or suit or alternative dispute resolution proceeding, including any counter-claim commenced by the service of a statement of claim, summons or similar pleading, or receipt of filing of a notice of charges;

(c) a criminal proceeding alleging a *wrongful act*, including any counter claim commenced by the service of the return of an indictment, information or similar document, issued by a *third party* against an *insured person* for a *wrongful act*.

*claim* also means:

3.6.2 a written request to extend the operation of or waive any statute of limitations or contractual time-bar in respect of a *claim*;

3.6.3 an *extradition claim* solely with respect to Extension 2.8 ‘Insured persons cover’ clause 2.8.2;

3.6.4 an *environmental mismanagement claim* solely with respect to Extension 2.5 ‘Environmental mismanagement and pollution’ and an *employment claim*;

3.6.5 a *company crisis* or *personal reputation crisis*;

3.6.6 a *securities claim* with respect to Insuring Clause 1.3.

3.7 Clean up costs

*clean up costs* means reasonable professional fees, costs and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of *pollutants*. 
3.8 **Company**

*company* means:

3.8.1 the *policyholder*;

3.8.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy);

3.8.3 any foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*, other than any pension or superannuation fund, trust or scheme, and

3.8.4 in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status in any applicable jurisdiction), if any.

3.9 **Company crisis**

*company crisis* means:

3.9.1 a *claim* made against an *insured* during the *period of insurance* under this policy that we reasonably believe will exceed NZD $5,000,000 in damages over and above the *deductible* of the relevant *Insuring Clause* to which the *claim* relates; or

3.9.2 the unforeseen death during the *period of insurance* of a key individual that we deem will have a significant adverse impact on the *company’s* financial performance; or

3.9.3 a reduction of more than 30% in the *company’s* market capitalisation during the *period of insurance* that can reasonably be attributed to one or more of the following unforeseen events:

(a) an extortion threat;

(b) an *environmental event*;

(c) an *extradition*; or

(d) a product recall.

A *company crisis* shall end once the external public relations or crisis management consultant advises the *company* that such *company crisis* no longer exists or six (6) months after the event in 3.9.1, 3.9.2 or 3.9.3 (whichever is applicable), whichever occurs first.

3.10 **Company reputation protection expenses**

*company reputation protection expenses* mean the reasonable fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) by the *company* until a *company crisis* ends or six (6) months after a *company crisis*, whichever occurs first, for an external public relations or crisis management consultant (which shall not be a law firm) specifically to mitigate the adverse publicity or potential adverse publicity to the *company* as a direct result of the *company crisis*.

3.11 **Continuity date**

*continuity date* means:

3.11.1 for *insured persons*, the Continuity date for Insured persons specified in the *schedule*; and

3.11.2 for the *company*, the Continuity date for the Company specified in the *schedule*.

3.12 **Corporate manslaughter proceeding**

*corporate manslaughter proceeding* means a formal criminal proceeding against an *insured person* for manslaughter (including but not limited to involuntary, constructive or grossly negligent manslaughter) in their capacity as such for the *company* and directly related to the business of the *company*. 
3.13 Deductible

deductible means the amounts specified as such in the schedule that will be the responsibility of the company, as applicable, to pay in respect of financial loss covered under the applicable Insuring Clause or extension of this policy.

3.14 Defence costs

defence costs mean reasonable legal and other professional fees, costs, charges and expenses (other than remuneration payable to any insured persons or employees of the company or an outside entity), cost of their time or costs or overheads of the company or an outside entity, incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) in the investigation, defence, settlement or appeal of any claim made against an insured.

Defence costs will also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved with our prior written consent to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a claim.

Defence costs do not include investigation costs.

3.15 Deprivation of asset and liberty proceeding

deprivation of asset and liberty proceeding means any proceeding brought against an insured person by an official body, resulting directly from or as part of a covered claim or investigation, seeking an order for:

3.15.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such insured person;

3.15.2 a charge over real property or personal assets of such insured person;

3.15.3 a temporary or permanent prohibition on or disqualification of such insured person from holding the office of or performing the function of a director or officer (or equivalent) of any entity or from managing a company;

3.15.4 the restriction of such insured person’s liberty to a specified domestic residence or official detention;

3.15.5 a prohibition on such insured person departing from a country; or

3.15.6 the deportation of such insured person following revocation of otherwise proper, current and valid immigration status for any reason other than such insured person’s conviction of a crime.

3.16 Director or officer

director or officer means:

3.16.1 any natural person who is a past, present or future director, officer, management committee member, supervisory board member, management board member, trustee or governor of the company and shall include any equivalent position in a foreign jurisdiction;

3.16.2 any natural person who is a past, present or future shadow director of the company;

3.16.3 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;

3.16.4 any director or officer defined in 3.16.1 to 3.16.3 above, who is, was or becomes a member of the company’s internal audit committee, or any other internal committee of the company;

3.16.5 any employee of the company who is a past, present or future corporate general counsel or risk manager (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 defined in 3.16.1 to 3.16.4 above; and

3.16.6 any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the company.
3.17 **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.

3.18 **Employment claim**

*employment claim* means:

3.18.1 a *claim* as defined in definition 3.6.1 and 3.6.2, based on any actual or alleged act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of the *company* or employee of an *outside entity*; or

3.18.2 a proceeding, investigation or charge brought by or before the Human Rights Commission (or similar body in any foreign jurisdiction).

Such proceeding, investigation or charge will be deemed to be made against an *insured person* when it is first brought.

3.19 **Environmental event**

*environmental event* means:

3.19.1 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

3.19.2 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*.

3.20 **Environmental mismanagement claim**

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

3.20.1 is a *securities claim*;

3.20.2 is an *employment claim* against an *insured person*, including any such *claim* for retaliatory treatment;

3.20.3 is against an *insured person* for *wrongful acts* in connection with an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes; or

3.20.4 results in *financial loss* incurred by an *insured person*.

3.21 **Expenses**

*expenses* means:

3.21.1 *investigation costs*;

3.21.2 *extradition costs*;

3.21.3 *prosecution costs*;

3.21.4 *civil or bail bond expenses*;

3.21.5 *personal expenses*; and

3.21.6 *personal reputation protection expenses*. 
3.22 Extended reporting period

*extended reporting period* means the period specified in extension 2.6 ‘Extended reporting period (ERP)’ during which written notice may be given to us of any:

3.22.1 claim which alleges a wrongful act; or

3.22.2 pre-claim event or investigation in respect of wrongful acts or conduct, occurring prior to the expiry of the period of insurance or change in control.

Any extended reporting period shall:

(a) commence immediately from expiry of the period of insurance or change in control, as applicable; and

(b) terminate immediately on the effective date of:

(i) the renewal of this policy by us; or

(ii) the placement of any directors and officers or management liability contract of insurance issued by any other insurer which effectively replaces or renews the coverage provided by this policy, either in whole or in part.

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

3.23 Extradition

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

3.24 Extradition claim

*extradition claim* means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1999 or any replacement or similar legislation in any foreign jurisdiction.

3.25 Extradition costs

*extradition costs* mean reasonable fees, costs, charges and expenses incurred, with our prior written consent (such consent not to be unreasonably withheld or delayed) resulting solely from:

3.25.1 an insured person lawfully:

(a) opposing, challenging, resisting or defending any extradition claim;

(b) appealing any order or other grant of extradition of that insured person; or

(c) seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;

3.25.2 the appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant retained by the insured person exclusively and directly in connection with the extradition of that insured person; or

3.25.3 travel and accommodation costs and living away from home expenses incurred by the insured person, his/her lawful spouse or civil union partner or de facto partner and any children under the age of eighteen, directly in connection with the extradition of such insured person. Provided that the ‘travel and accommodation costs and living away from home expenses’ sub-limit of liability specified in the schedule shall be our maximum liability in the aggregate for all such costs and expenses under this policy for all insured persons, spouses / civil union partner / de facto partner and children, combined.
3.26 External administrator

*external administrator* means any liquidator, receiver, receiver and manager, administrator, controller or holder of similar office or position in any jurisdiction whether appointed in New Zealand or any other law in a foreign jurisdiction.

3.27 Financial impairment

*financial impairment* means the status of the company resulting from:

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

3.27.2 the appointment by or on behalf of the company of administrators; or

3.27.3 the company being placed into receivership or liquidation.

3.28 Financial institution

*financial institution* means any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company (other than a captive owned by the *policyholder*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

3.29 Financial loss

*financial loss* means the total amount the *insured* is legally and personally liable and obligated to pay resulting from a *claim* made against such *insured* for which coverage applies, including but not limited to:

3.29.1 damages and judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff’s legal fees and/or their reasonable costs, charges and expenses arising from the *claim* awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) which any *insured* becomes legally liable to pay;

3.29.2 sums payable for any settlement to which we have consented;

3.29.3 *defence costs*;

3.29.4 *pre-claim costs*;

3.29.5 punitive, exemplary, aggravated and multiple damages awarded against an *insured person* where permissible and insurable under applicable law;

3.29.6 *civil or bail bond expenses*;

3.29.7 *investigation costs* (under Insuring Clauses 1.5);

3.29.8 *asset and liberty protection costs*;

3.29.9 *extradition costs*;

3.29.10 fines and pecuniary penalties (including fines for corrupt practices) awarded against an *insured person* where permissible and insurable under applicable law;

3.29.11 *personal expenses*;

3.29.12 *prosecution costs*;

3.29.13 *personal reputation protection expenses*;

3.29.14 *company reputation protection expenses* (under extension 2.2 ‘Company reputation cover’); and

3.29.15 *indemnity costs for shareholder derivative claims* (under extension 2.7 ‘Indemnity costs for shareholder derivative claims’).

Only sub-paragraphs 3.29.1 to 3.29.3 are applicable to *securities claims* under Insuring Clause 1.3 of this policy.
Financial loss (other than defence costs) does not include:

(i) taxes (other than those covered under extension 2.13 ‘Tax liability’ and condition 5.9 ‘Goods and service tax’);
(ii) criminal fines and penalties;
(iii) social security contributions;
(iv) fines and pecuniary penalties that we are legally prohibited from paying, or are uninsurable or are 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;
(v) payments that are uninsurable under the law pursuant to which this policy shall be construed;
(vi) clean up costs; or
(vii) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Financial Markets Authority or similar.

We shall not assert that any defence costs or settlements incurred by an insured person is uninsurable due to the insured person’s actual or alleged violation of Sections 11, 12 or 15 of the U.S. Securities Act of 1933 (as amended) unless precluded from doing so due to court order.

3.30 Foreign jurisdiction

foreign jurisdiction means any jurisdiction other than New Zealand.

3.31 Foreign policy

foreign policy means, in relation to a foreign jurisdiction, the most recently revised standard form of wording for a directors and officers policy of insurance issued by Zurich or our affiliate in such foreign jurisdiction that provides substantially similar coverage to the coverage provided by this policy.

3.32 Greenhouse gases

greenhouse gases mean carbon dioxide (CO2), methane (CH4), nitrous oxide (N20), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF6), or any other emission or substance defined by any applicable law as a greenhouse gas.

3.33 Indemnified financial loss

indemnified financial loss means financial loss of the insured person which the company is required to and not prohibited from indemnifying, and does not include pre-claim costs.

3.34 Insured

insured means:

3.34.1 any insured person; and

3.34.2 the company.

3.35 Insured person

insured person means any:

3.35.1 director or officer;

3.35.2 outside entity executive;

3.35.3 employee of the company, other than a director or officer, in relation to:

(a) any securities claim;

(b) employment claim;

(c) any investigation; or

(d) all other claims, provided that such claim is also made concurrently, against a director or officer.
Insured person also means any lawful spouse or civil union partner or de facto partner (including same sex relationships) of any insured person listed in 3.35.1 to 3.35.3 above, and estates, heirs or legal representatives of any insured person listed in 3.35.1 to 3.35.3 above 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 exclusions of this policy in so far as they can apply.

For the avoidance of doubt, this policy will not cover any claim arising out of any act, error or omission of any spouse, civil union partner or de facto partner, estate, heir or legal representatives. Insured person will not include any agent, contractor, consultant, external auditor, trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, administrator or receiver and manager (or similar official or person appointed for the policyholder or the equivalent in any other jurisdiction) of the company.

3.36 International program policies
international program policies mean the policy(ies) specified as such in the schedule.

3.37 Interrelated wrongful acts
interrelated wrongful acts mean all wrongful acts that have as a common link any fact, circumstance, situation, event, transaction, cause or source or series of causally connected facts, circumstances, situations, events, transactions, causes or sources.

3.38 Investigation
investigation means a formal or official criminal, administrative or regulatory investigation, examination, hearing or enquiry:

3.38.1 of an insured person in their capacity as such:
(a) commenced or brought and maintained by an official body (except the U.S. Securities and Exchange Commission or similar U.S. state or local agency), once an insured person is required or requested to attend in writing; or
(b) commenced or brought and maintained by the U.S. Securities and Exchange Commission or similar U.S. state or local agency after the service of a subpoena or Wells Notice upon such insured person; or
(c) commenced by the arrest and detainment or incarceration for more than twenty-four (24) hours of such insured person by any law enforcement authority in a foreign jurisdiction.

3.38.2 into the affairs of the company or an outside entity by an official body, once an insured person is required or requested to attend in writing, including by a formal or official notice, request, demand or subpoena from an official body:
(a) to examine, interview or depose an insured person; or
(b) for the production of documents by an insured person,
in connection with such investigation, examination, hearing, or enquiry.

For the purposes of part 3.38.2 of this definition, official body shall not include the U.S. Securities and Exchange Commission or similar U.S. state or local agency. Investigation does not include industry-wide or sector investigations, examinations, hearings, enquiries or any routine regulatory audit, examination, inspection or review.

An investigation shall be deemed to be ‘first made’ when the insured person is first so required or requested to attend in writing, first so served or first so arrested and detained.
3.39 Investigation costs

*investigation costs* mean reasonable professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons*, cost of their time or costs or overhead of the *company* or an *outside entity*) incurred with our prior 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.

3.40 Joint venture

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

3.41 Limit of liability

*limit of liability* means the amounts specified as such in the *schedule* which shall be our maximum liability, in the aggregate, payable under this policy for all covered *financial loss*, subject to the terms and conditions of this policy.

3.42 Non-indemnified financial loss

*non-indemnified financial loss* means *financial loss* of the *insured person* which the *company* is unable to indemnify due to:

3.42.1 a prohibition under law (statutory or at common law);

3.42.2 a prohibition in the *company* charter, by-laws, articles of association or similar documents; or

3.42.3 the *company’s financial impairment*.

3.43 Non-profit organisation

*non-profit organisation* means any company or legal entity established for any charitable, community, social or industry purpose or for the provision of services or benefits to its members and not for the purpose of making profits.

3.44 Official body

*official body* means:

3.44.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or *external administrator* legally empowered to conduct an *investigation* into the affairs of the *company* or *outside entity*, or the conduct of an *insured person* in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; and

3.44.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities*.

3.45 Outside entity

*outside entity* means any:

3.45.1 *non-profit organisation*; or

3.45.2 *associated company*; or

3.45.3 *for profit entity*, but excluding any:

(i) *financial institution*;

(ii) entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or

(iii) other entity (other than a *non-profit organisation*) that had negative net worth at the commencement date of this policy,

unless such *financial institution* or entity is specified as an *outside entity* in an endorsement to this policy.
3.46 Outside entity executive
outside entity executive means any director or officer or employee of the company who:

3.46.1 did or will serve or act; or

3.46.2 during the period of insurance is serving or acting,
in his or her capacity as a director or officer (or equivalent executive or management position in any other
country) of an outside entity at the company’s specific direction and request.

3.47 Period of insurance
period of insurance means the period of time specified as the Period of insurance in the schedule including any
extension thereto agreed in writing by us.

3.48 Personal reputation crisis
personal reputation crisis means any negative statement specifically regarding and referencing an insured person
that is included in any press release or published in any print or electronic media outlet in respect of a claim. A
personal reputation crisis shall be deemed to be made against an insured person when such press release or such
publication was first released or syndicated to a third party.

3.49 Personal expenses
personal expenses mean housing, utilities, personal insurances and schooling expenses paid on behalf of an
insured person directly to the provider of such services in the event of an interim or interlocutory order during
the period of insurance for:

3.49.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of
real property or personal assets of such insured person; or

3.49.2 a charge over real property or personal assets of such insured person,
resulting directly from or as part of a covered claim and provided that a personal allowance has been directed by
the court to meet such payments and such personal allowance has been exhausted.

Such expenses will be payable from thirty (30) days following the order described above for a period of twelve
(12) months from the date of the order.

3.50 Personal reputation protection expenses
personal reputation protection expenses mean the reasonable fees, costs, charges and expenses incurred, by
a public relations firm or consultant, crisis management firm (which shall not be a law firm), which an insured
person in the reasonable exercise of his or her discretion may engage with our written consent (such consent not
to be unreasonably withheld or delayed) to prevent or limit adverse effects of or negative publicity in respect of a
personal reputation crisis.

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

3.52 Pollutants
pollutants mean 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.
3.53 Pre-claim costs

pre-claim costs mean reasonable professional fees, costs, charges and expenses incurred, with our prior written consent (such consent not to be unreasonably withheld or delayed), by an insured person in retaining advisors separate from the company or an outside entity:

3.53.1 to provide legal advice directly related to a pre-claim event; or

3.53.2 to prepare a report (and any supplementary reports as necessary) to an official body in response to a pre-claim event.

Provided that pre-claim costs shall not include indemnified financial loss, nor form part of the definition of indemnified financial loss.

3.54 Pre-claim event

pre-claim event means with respect to an insured person in their capacity as such:

3.54.1 a raid on, or on site visit, to any company or any outside entity by an official body that involves the production, review, copying or confiscation of documents or interviews of such insured person;

3.54.2 any formal written notification to an official body by the company, by the outside entity or by such insured person of a suspected material breach of such insured person’s legal or regulatory duty; or

3.54.3 the receipt by such insured person of a formal notice from an official body which legally compels such insured person to produce documents to, or answer questions by, or attend interviews with, that official body directly as a result of a self report.

Provided that such raid, visit, announcement, notification or receipt of notice first takes place or first occurs during the period of insurance, or extended reporting period if applicable. A pre-claim event shall be deemed to be ‘first made’ against an insured when such raid, visit, announcement, notification and receipt of notice first took place or occurred.

A pre-claim event shall not include industry-wide or sector investigations, hearings, examinations or inquiries or any routine or regular regulatory audit, examination, inspection or review.

3.55 Prior known fact

prior known fact means any fact or matter which:

3.55.1 an insured person first became aware of, after the continuity date, but prior to the commencement of the period of insurance; and

3.55.2 the insured person knew, at any time after the continuity date but prior to the commencement of the period of insurance, may result in an allegation against the insured of a wrongful act.

3.56 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.

3.57 Prosecution costs

prosecution costs mean the reasonable professional fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed), by an insured person in bringing a proceeding to obtain:

3.57.1 a declaration and/or injunction to oppose any deprivation of asset and liberty proceeding;

3.57.2 the discharge or revocation of an order arising from a deprivation of asset and liberty proceeding; and/or

3.57.3 a finding that an official body is acting beyond its powers or in breach of the rules of natural justice in conducting an investigation.
3.58 Schedule

schedule means the Schedule attaching to and forming part of this policy duly signed and stamped by an authorised officer of Zurich.

3.59 Securities

securities mean any bond, debenture, note, share, stock, American Depository Receipts 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.

3.60 Securities claim

securities claim means any:

3.60.1 written demand for damages or other legal remedy or civil proceeding commenced directly or derivatively by a past or present holder of securities of and issued by the company, in that holder's capacity as a security holder in the company; or

3.60.2 a regulatory proceeding commenced by any official body, but only in connection with the purchase, sale, or offer to purchase or sell securities of and issued by the company,

which alleges a wrongful act involving the violation of securities laws.

A securities claim shall include any US securities claim.

3.61 Self report

self report means a written report or notification to an official body by the company, an outside entity or an insured person pursuant to a legal obligation to inform such official body of matters giving rise to an actual or potential regulatory issue where failure to provide such a report or delay in reporting can itself give rise to enforcement consequences from such official body.

3.62 Shadow director

shadow director means any person who has not been validly appointed as a director, but who meets any of the requirements of s 126(1) of the Companies Act 1993, or equivalent legislation in a foreign jurisdiction.

However, a person is not a shadow director merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.

3.63 Statutory charge

statutory charge means means a charge under the Law Reform Act 1936 (NZ), Law Reform (Miscellaneous Provisions) Act 1946 (NSW), the Civil Law (Wrongs) Act 2002 (ACT), the Law Reform (Miscellaneous Provisions) Act 1956 (NT) or any other substantially similar legislation on this policy, where the value of the charge may be greater than this policy's limit of liability.

3.64 Submission

submission means:

3.64.1 any information and/or statements or materials;

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

3.64.3 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.
3.65 Subsidiary

*subsidiary* means any entity in which the *policyholder* directly or indirectly:

3.65.1 holds more than 50% of the voting rights;
3.65.2 holds more than 50% of the issued share capital or equity; or
3.65.3 has the right, pursuant to a written agreement with other shareholders, to appoint or remove a majority of the board of directors (or equivalent in any other country),

and any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Financial Reporting Act 2013 or the applicable New Zealand accounting standard (or equivalent legislation and accounting standards in a *foreign jurisdiction*).

Cover in respect of:
(i) any *insured person* of any *subsidiary*; or
(ii) any *subsidiary*,

only applies to *wrongful acts* or conduct committed after such entity becomes a *subsidiary* and prior to such entity ceasing to be a *subsidiary*, unless otherwise stated in this policy.

3.66 Superannuation guarantee charge

*superannuation guarantee charge* means an *insured person’s* personal obligation to pay a superannuation guarantee charge to the Australian Taxation Office pursuant to Section 5 of the Superannuation Guarantee Charge Act 1992 (Cth).

3.67 Third party

*third party* means any person or entity other than the *company*, an *insured person* or an *outside entity*.

3.68 US claim

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

3.68.1 within the jurisdiction of; or
3.68.2 pursuant to the laws of,

the United States of America or Canada or their territories and/or possessions.

3.69 US securities claim

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

3.69.1 within the jurisdiction of; or
3.69.2 pursuant to the laws of,

the United States of America or Canada or their territories and/or possessions.

3.70 Wrongful act

*wrongful act* means any act or omission occurring before or during the *period of insurance*, 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:

3.70.1 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 with respect to a *claim* under Insuring Clauses 1.1 and 1.2;
3.70.2 any *insured person* whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an *outside entity* at the *company’s* specific direction and request, but only with respect to a *claim* under Insuring Clause 1.4; or
3.70.3 the *company*, but only with respect to a *securities claim* under Insuring Clause 1.3.
4. **Exclusions**

We shall not be liable under this policy for any **financial loss** in respect of the following:

4.1 **Bodily injury / property damage**

any **claim** for **bodily injury** and/or **property damage** except that cover shall be provided for:

4.1.1 mental anguish or emotional distress in connection with any **employment claim**; or

4.1.2 **financial loss** otherwise covered under extension 2.14 ‘Workplace health and safety’.

4.2 **Conduct**

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

4.2.1 any **insured** having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or

4.2.2 any dishonest or fraudulent act or omission committed by any **insured** or any intentional violation or breach of any law or regulation; provided that this exclusion shall not apply to **defence costs** incurred by an **insured person** in connection with a **corporate manslaughter proceeding** or **workplace health and safety proceeding**.

This exclusion, part 4.2.1 of this exclusion shall not apply in a **securities claim** against an **insured person** alleging violations of Sections 11, 12 or 15 of the United States of America Securities Act of 1933 to the portion of any **financial loss** attributable to such violations.

This exclusion only applies where the conduct in question has been finally established by court judgment or other final non-appealable adjudication.

For the purpose of determining the applicability of this exclusion:

(a) no conduct or knowledge of an **insured** shall be imputed to any other **insured person**; and

(b) 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 holder of any equivalent position) of the **company** shall be imputed to the **company**, for the purposes of Insuring Clause 1.3.

4.3 **Insured vs insured US claims only**

any **US claim** brought by, or on behalf of, or at the instigation of the **company** or an **outside entity**; provided, however, this exclusion shall not apply to:

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

4.3.2 a **claim** in the form of a derivative action brought or maintained in the name of the **company** or the **outside entity** by one or more persons who are not directors or officers (or equivalent in any other country) of the **company** or the **outside entity** and who bring and maintain the **claim** without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the **company** or the **outside entity**; or

4.3.3 **defence costs** incurred by the **insured person**.
4.4 Prior and pending

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

4.4.1 facts alleged or the same or related wrongful act(s) alleged or contained in any claim or circumstance that has been:
   (a) notified under any directors and officers or management liability insurance policy or employment practices liability insurance policy of which this policy is a renewal or replacement or which it may succeed in time (unless such prior policy was issued by us and we did not cover or accept such claim or circumstance under such prior policy); or
   (b) disclosed in the submission or notified to any other insurer before the commencement of the period of insurance.

4.4.2 investigation or other proceedings ordered or commissioned at the behest of an official body or other legally empowered body as defined in definition 3.38.1 (a) and (c) of this policy initiated prior to or pending on the continuity date specified in the schedule.

4.4.3 any civil, criminal, administrative, regulatory proceeding, litigation, suit, claim, proceeding, arbitration or mediation initiated or commenced prior to or pending at the ‘Prior or pending date’ specified in the schedule, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

5. Conditions

5.1 Assignment

Any rights under this policy will not be assigned without our prior written consent.

5.2 Cancellation

This policy may not be cancelled by us except for non-payment of premium. If the policyholder cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.

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

This policy may not be cancelled by the policyholder:

5.2.1 during the extended reporting period, once elected;

5.2.2 after the policyholder undergoes a change in control.

5.3 Change in control and public offering

5.3.1 If during the period of insurance the policyholder undergoes a change in control, then the cover provided by this policy will be amended to only apply in respect of wrongful acts or conduct occurring prior to the effective date of such change in control until the policy expiry date. The policyholder will give us written notice of such change in control as soon as reasonably practicable.

5.3.2 If during the period of insurance the policyholder or any subsidiary plans or makes, in whole or in part, in the United States of America, a public offering of its securities of more than the US market capitalisation increase percentage specified in the schedule, it will inform us as soon as practicable. We will not be liable to make any payment of financial loss arising from any securities claim associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the policyholder agrees with us on any amendments to this policy and makes payment of any additional premium required, within 90 days following the public announcement of such offering, after which cover shall apply retroactively for the full period of insurance. The payment of any additional premium (including insurance premium tax) will be a condition precedent to our liability under this condition.
5.4 Confidentiality
The existence and terms of this policy will be confidential as between the insured and us and will not be published, disclosed or otherwise communicated except where:

5.4.1 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;

5.4.2 we consent in writing to disclosure of the existence and/or terms of this policy; or

5.4.3 the insured is compelled by order of a court to do so.

5.5 Connectivity with the Companion policy
This policy may connect with Zurich’s Companion Directors and Officers Defence Costs and Expenses Insurance issued to the policyholder as defined in the schedule, where we have determined that a statutory charge prevents payment under this Directors and Officers Liability Insurance policy.

In the event that defence costs or expenses have been advanced or paid under Zurich’s Companion Directors and Officers Defence Costs and Expenses Insurance, and it is subsequently determined (at our sole and absolute discretion) that such payment could have been paid under this policy, the amount of such payment will be reimbursed from this policy to that policy.

5.6 Deductible and coinsurance
5.6.1 The deductible will apply to the insured persons for indemnified financial loss and the company for all financial loss.

We will be liable only for the amount of financial loss which arises from a claim, or is in respect of a company crisis, that exceeds the deductible applicable to such claim or company crisis. The deductible is not part of our limit of liability. The deductible is to be borne by the company and will remain uninsured.

Irrespective of the number of insureds claimed against, a single deductible will 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 interrelated wrongful acts.

5.6.2 The company will bear uninsured and at its own risk the securities claim co-insurance percentage specified in the schedule of all financial loss payable under Insuring Clause 1.3, up to the limit of liability. This is in addition to the applicable deductible.

5.6.3 No deductible will apply to any claim, and we will reimburse those defence costs incurred by the insured to the extent not already paid by us, if:

(a) the claim is dismissed without any payment by or on behalf of the insured;

(b) there is a final judgment of no liability in favour of the insured or by settlement to which we have consented or by summary judgment, and without any payment by or on behalf of the insured; or

(c) there is a final judgment of no liability obtained after trial, in favour of the insured, after the exhaustion of all appeals.

Any reimbursement under this clause will only occur if, sixty (60) days after the date of dismissal or final judgment of no liability is obtained, there is no further claim brought based on the same wrongful act or interrelated wrongful acts or facts or matters relating to or alleged in the original claim.
5.7 Defence costs, settlements and allocation

5.7.1 It will be the duty of the insured 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 will have no duty to defend any claim made against any insured.

5.7.2 With respect to any claim or company crisis as may potentially be covered by this policy, we will have the right to:

(a) be provided with all such information as we shall reasonably require, at the insured's own cost;

(b) be kept fully informed as to all matters relating to or concerning the investigation, defence, settlement or appeal of any claim or the resolution of any company crisis and will have the right to receive copies of all relevant documentation relating thereto; and

(c) associate effectively with the insured in the defence, investigation and the negotiation of any settlement of any claim.

5.7.3 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 Queen’s Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation). The costs of such determination by Queen’s 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.

5.7.4 The insured will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any defence costs, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs or prosecutions costs, and no legal representative will 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, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs and prosecutions costs that have been consented to by us in writing will be recoverable as financial loss under the terms of this policy (other than as allowed under extension 2.4 ‘Emergency costs and expenses’).

5.7.5 We will 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.

5.7.6 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 and any other uninsured person or entity (including the company) where the financial loss has been jointly or jointly and severally incurred by them. Such allocation will 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 Queen’s Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation).

The parties will be bound by Queen’s 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, we will advance defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses and company reputation protection expenses 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, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses and company reputation protection expenses incurred prior to the date of such negotiation or determination.

5.8 Failure of the company to indemnify insured persons

If the company or an outside entity is not prohibited at law from indemnifying an insured person, but for whatever reason fails or refuses to do so, other than by reason of financial impairment, they will be presumed to have indemnified such insured person for indemnified financial loss up to the deductible applicable to Insuring Clauses 1.2, 1.4.2 and 1.5. In this event, we will pay the insured person financial loss which should otherwise have been indemnified by the company and we will be entitled to recover that loss, up to the amount of the applicable deductible, from the company.

In the event of the company being placed in liquidation (other than voluntary liquidation), no deductible amount will apply.

5.9 Goods and services tax

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

5.10 Law and jurisdiction

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, the insured will submit to the exclusive jurisdiction of any competent Court in New Zealand.

5.11 Limit of liability

Subject to the Insuring Clauses and extensions, the limit of liability will be our maximum liability (over and above any applicable deductible) in the aggregate, payable under this policy for all covered financial loss arising from all claims made against all insureds during the period of insurance and any extended reporting period (if applicable) and either company crisis or personal crisis during the period of insurance. The limit of liability specified as Limit of liability for Insuring Clauses 1.1 to 1.5 in the schedule will apply to the applicable Insuring Clause if lower than the limit of liability specified as ‘Aggregate for all claims during the period of insurance’.

For the avoidance of doubt:

5.11.1 the operation of any applicable extended reporting period shall not increase the limit of liability;
5.11.2 all sub-limits of liability are part of and not in addition to the limit of liability; and
5.11.3 the additional limit available under extension 2.1 ‘Additional limits for directors or officers and outside entity executives’ is in addition to the limit of liability.

All claims arising out of the same wrongful act and all interrelated wrongful acts of all insureds will be deemed one claim, and such claim shall be deemed to be first made on the date the earliest of such claims is first made against any insured, regardless of whether such date is before or during the period of insurance.

All investigations (whether linked to a claim or otherwise) which have a common or related fact, circumstance, situation, event, cause or source will be deemed a single investigation and such single investigation will be deemed to be first made on the date the earliest of such investigations is first made against an insured person, regardless of whether such date is before or during the period of insurance.
5.12 Newly created or acquired subsidiaries

5.12.1 If during the period of insurance the policyholder creates or acquires an entity:

(a) that has total consolidated assets equal to or less than the amount or percentage of the policyholder's total consolidated assets specified for the creation and acquisition of subsidiaries in the schedule;

(b) whose securities are not listed in the United States of America; and

(c) that is not a financial institution;

then that entity will be deemed as a subsidiary under this policy and any individuals of that entity holding positions equivalent to those positions set forth in the definition of insured person will also be deemed as insured persons under this policy.

5.12.2 If during the period of insurance an entity is created or acquired but the criteria described in 5.12.1 (a) to (c) do not apply, such entity will be deemed as a subsidiary under this policy and will be covered for a period of ninety (90) days from the date the entity became a subsidiary or until the expiry date of the period of insurance, whichever period expires first.

We may, at our discretion, agree to extend cover beyond ninety (90) days provided that the policyholder:

(a) notifies us in writing of such creation or acquisition of a subsidiary;

(b) provides all information about the entity that we require; and

(c) agrees to any additional premium and/or amendments to the terms and conditions of this policy.

5.13 Non-disclosure and misrepresentation waiver

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

5.13.1 against an insured person who, before the period of insurance, knew the non-disclosure or misrepresentation was fraudulent, and any company to the extent that it may indemnify such insured person; and

5.13.2 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 the holder of any equivalent position) of the company or the holder of any equivalent position in a jurisdiction, knew the non-disclosure or misrepresentation was fraudulent.

and only where the claim, investigation or company crisis is based upon or arises from the facts or matters fraudulently not disclosed or fraudulently misrepresented.

In respect of any innocent non-disclosure or innocent misrepresentation, we waive any right we have to reduce our liability to pay financial loss in respect of a claim, investigation or company crisis.

5.14 Notifications – claims, crises, investigations

The insured will give written notice to us of any claim made against an insured during the period of insurance or extended reporting period (if applicable) or company crisis during the period of insurance 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 company crisis and in no event later than 90 (ninety) days after the expiry of the period of insurance or the extended reporting period (if applicable).

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

5.14.1 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;
5.14.2 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 became aware of the investigation; or

5.14.3 company crisis and the resultant actual or potential adverse publicity.

All notices under condition 5.14 will be provided in writing to the Notification address specified in the schedule. Any notification, sent by post or email, will be effective from the date received by us.

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

5.15 Order of payments

In the event of financial loss arising from a claim for which payment is due under the provisions of this policy, then we will always first pay non-indemnified financial loss of an insured person under Insuring Clauses 1.1, 1.4.1 and 1.5.1 and then only after this payment, with respect to whatever remaining amount of the limit of liability is available, pay such other financial loss for which cover is provided under the other Insuring Clauses of this policy.

5.16 Order of recoveries

Any sums recovered following a payment or payments under this policy will be distributed in the following order:

5.16.1 the costs we have incurred in the course of such recovery;

5.16.2 to the policyholder in respect of any amount by which the amount of the financial loss exceeded the limit of liability;

5.16.3 to us to the extent of the financial loss paid or payable; and

5.16.4 to the policyholder for the amount of any deductible applicable.

5.17 Other insurance and indemnification

The insured must notify us of the existence of any other insurance policy or equivalent indemnity or cover available to the insured in respect of financial loss covered under this policy and provide details of it as soon as reasonably practical.

This policy will always apply as excess over any other valid and collectable insurance or indemnification (other than from the company), available to the insured. When any other insurer has acknowledged a duty to defend any claim that would otherwise be subject to coverage under this policy, this policy will not respond or contribute to such defence costs to the extent of that other insurer's duty to defend.

5.18 Plurals and headings

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

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

5.18.2 singular includes the plural, and vice versa;

5.18.3 the male includes the female and neuter;

5.18.4 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

5.18.5 references to positions, offices or titles will include their equivalents in any jurisdiction in which a claim is made or an investigation is commenced.
5.19 Severability and non-imputation
In granting cover under this policy we have relied upon the submission which forms the basis of this contract of insurance and will be considered as incorporated in and constituting part of this policy.

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

5.19.1 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 will be imputed to any other insured persons for the purpose of determining the availability of cover under this policy;

5.19.2 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 will be imputed to the company for the sole purpose of determining if cover is available under Insuring Clauses 1.2, 1.4.2 and 1.5 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 cover under Insuring Clauses 1.2, 1.4.2 and 1.5 in relation to the financial loss of that other insured person; and

5.19.3 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 will be imputed to the company for the purposes of indemnity under Insuring Clause 1.3 in relation to the financial loss of any company.

5.20 Subrogation
Upon any payment of or towards any claim we will be entitled to assume conduct of all rights of recovery available to any insured and all reasonable assistance will be rendered to us in the prosecution of such rights by such insured persons or the company. The insured will execute all papers reasonably required and shall take all reasonable action that may be necessary to secure any and all of our subrogation rights including, but not limited to, an action against the company for non-payment of indemnity to the insured persons by the company.

In no event, however, will we exercise our rights of subrogation against an insured person under this policy unless it is determined by a court judgment or final non-appealable adjudication in the underlying action or in a separate action or proceeding that such insured person had engaged in any conduct which is the subject of exclusion 4.2 ‘Conduct’.

5.21 Valuation and foreign currency
All premiums, limits of liability, sub-limits of liability, deductibles, retentions, financial loss and other amounts under this policy are expressed and payable in New Zealand 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 New Zealand dollars, payment under this policy will be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review 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.

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

6.1 Worldwide cover
Cover under this policy will apply to financial loss incurred, claims made, investigations, wrongful acts and conduct committed and either company crisis or personal crisis anywhere in the world, unless otherwise specified.

6.2 Global liberalisation
With respect to financial loss arising from a covered claim made against an insured person that is brought in a foreign jurisdiction, we will apply those terms and conditions of the foreign policy commonly offered to other insureds of a similar nature or size to the policyholder in such foreign jurisdiction in the ordinary course of business, that are more favourable to the insured person than the terms and conditions of this policy, if permitted by law.

Notwithstanding the foregoing, this global liberalisation clause will not apply to any provision of this policy or any other policy addressing: the definitions of insured, insured person and financial loss; the Insuring Clauses; the limit of liability (primary, excess; or sub-limit of liability); deductibles; cancellation or non-renewal procedures; claim made; other insurance; duty to defend; taxes; the premium; extended reporting or discovery periods, any endorsement added to this policy, and condition 5.10 ‘Law and jurisdiction’. It is further agreed that any specific endorsement added to this policy will be applied to the terms, conditions, exclusions and limitations of the foreign policy. If there is a sub-limit of liability within the cover of the foreign policy such sub-limit of liability shall be no more than NZD $1,000,000 for the purposes of this clause.

6.3 International program policies
6.3.1 Non-aggregation of limits of liability
(a) It is hereby understood and agreed that corresponding to the liability of the policyholder and all subsidiaries to pay the aggregate premium for this policy and all international program policies, all contractual parties to those policies agree that for the purpose of the calculation of the limit of liability of this policy and the Limits of Liability of all international program policies (combined), all payments of financial loss under this policy and all international program policies (or any combination of those policies) are added up and are limited to the amount of the limit of liability of this policy (hereinafter called the Aggregate Limit of Liability).

(b) The Aggregate Limit of Liability will be the maximum Limit of Liability and payment by Zurich, in the aggregate, for all amounts payable under this policy and all international program policies combined, except for any amount payable under Extension 2.1 ‘Additional limits for directors or officers and outside entity executives’ in this policy or under any equivalent clause in the international program policies.

(c) The amount specified in the schedule as the maximum aggregate additional limit for directors or officers and outside entity executives (hereinafter called the Aggregate Additional Limit of Liability) will be the maximum amount and payment by Zurich, in the aggregate, for all amounts payable under Extension 2.1 of this policy and under all equivalent clauses providing for Additional limits for directors or officers and outside entity executives in all international program policies, combined.

(d) It is further understood and agreed that nothing in the Non-aggregation of limits of liability clause shall be construed to increase:

(i) the Limit of Liability set forth in the schedule of the international program policies, which will remain the maximum liability under such policies, (save for the operation of any provision equivalent to Extension 2.1 of this policy);

(ii) our limit of liability under this policy, which will remain our maximum liability under this policy, (save for the operation of Extension 2.1 of this policy); or

(iii) the maximum aggregate additional limit for directors or officers and outside entity executives under Extension 2.1 of this policy or any equivalent provision in the international program policies, which will remain our maximum liability under those provisions.
6.3.2 Hold Harmless Agreement – special conditions regarding aggregation

In the event that:

(a) the Aggregate Limit of Liability (defined in the Non-aggregation of limits of liability clause above) is exceeded by any and/or all payments under this policy and/or any or all international program policies (other than by the operation of Extension 2.1 of this policy or any equivalent provision in the international program policies); or

(b) the Aggregate Additional Limit of Liability (defined in the above Non-aggregation of limits of liability clause) is exceeded by any and/or all payments under Extension 2.1 of this policy or any equivalent provision in the international program policies,

the policyholder will reimburse Zurich and/or any partners of Zurich that issued any international program policy in respect of any amount paid by or which has been agreed to be paid by any of the insurers of the international program policies in excess of the Aggregate Limit of Liability or the Aggregate Additional Limit of Liability, as the case may be.

Any amount payable under the terms of this clause will be paid by the policyholder within thirty (30) days of notice from the other party.

6.3.3 Notice and authority for international programs

It is agreed that the policyholder will act on behalf of its subsidiaries and each and every insured with respect to the issuance and development of all international program policies, including all terms, conditions, exclusions and limitations of such international program policies, including, but not limited to 6.3.1 above. It is further understood and agreed that the policyholder will inform its subsidiary of any international program policy to be issued for such subsidiary.

6.3.4 Cancellation and non-renewal of international program policies

If this policy is cancelled, rescinded or non-renewed then all other international program policies will be deemed cancelled, rescinded or non-renewed with effect from the same date as this policy.

6.3.5 Master program

This policy acts as a master directors and officers liability program to operate where international program policies have been issued at Zurich’s request for the Limits of Liability and in the countries specified in the schedule and which are reinsured by Zurich.

References to ‘financial loss’ in Clauses 6.3.1 and 6.3.2 above, also refer to the equivalent term under each international program policy.
This page has been left blank intentionally
Zurich Australian Insurance Limited
(incorporated in Australia)
Trading as Zurich New Zealand
ABN 13 000 296 640, AFS Licence No: 232507
Zurich House: Level 16, 21 Queen Street Auckland Central 1010

Client Enquiries
Telephone: 0508 ZURICH
0508 987 424
www.zurich.co.nz

Zurich House: Level 16, 21 Queen Street Auckland Central 1010

Client Enquiries
Telephone: 0508 ZURICH
0508 987 424
www.zurich.co.nz