

Asset Investment Managers Insurance

Policy Wording



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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 *pending or prior litigation date* stipulated in the policy *schedule*.

Duty of Disclosure

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

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

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

Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure we may treat your policy as if it never existed.

Our contract with you

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

Your policy is made up of:

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

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

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

Asset Investment Managers Insurance Policy Wording

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

1. Insuring Clauses

1. Directors and Officers Liability

We agree to pay on behalf of the *individual insured* all loss arising out of a *wrongful act* which gives rise to a *claim* first made against such *individual insured* during the *period of insurance* or the *extended reporting period* (if applicable) to the extent that such *loss* is not indemnified by the *insured entity*.

2. Company Reimbursement

We agree to pay on behalf of the *insured entity* any indemnity payable to any *individual insured* which the *insured entity* is legally entitled or obliged to make, for a *loss* arising out of a *wrongful act* which gives rise to a *claim* first made against such *individual insured* during the *period of insurance* or the *extended reporting period* (if applicable).

3. Entity Securities

We will pay on behalf of the *insured entity*, *loss* arising from or as a consequence of any *securities claim* first made against the *insured entity* during the *period of insurance* or the *extended reporting period* (if applicable) by reason of a *wrongful act*.

4. Professional Liability

We agree to pay on behalf of the *insured* all loss arising out of a *wrongful act* which gives rise to a *claim* first made against the *insured* or the *individual insured* during the *period of insurance* or *extended reporting period* (if applicable).

5. Crime

We agree to pay on behalf of the *insured entity* any *loss* occurring in that *insured entity* which results directly from any *criminal act* which is first *discovered* during the *period of insurance* or any *extended reporting period* (if applicable).

2. Definitions

2.1 Civil or Bail bond expenses

civil or bail bond expenses means a fee or premium (and only those that are available at reasonable commercial rate) necessary to obtain such a bond or other similar form of guarantee for the period of no more than 12 months, in respect of obligations as to a specific security or collateral placed upon the *individual insured* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

2.2 Claim

claim means:

- (a) any suit or proceeding, including any civil proceeding, *third party* proceeding, counterclaim or arbitration proceeding, brought by any person or entity against an *insured* for monetary damages or other relief, including non-pecuniary relief;
- (b) any written demand from any person or entity that it is the intention of the person or entity to hold an *insured* responsible for the results of any specified *wrongful act*;
- (c) any official *investigation*, examination, inquiry or other similar proceeding at which an *individual insured's* attendance is required provided such official *investigation*, examination, inquiry or other similar proceeding is directly related to a specific alleged *wrongful act* of such *individual insured* in their capacity as such; or
- (d) any criminal proceedings brought against an *individual insured* regarding any specified *wrongful act* of an *insured*.

For the purpose of Insuring Clauses 1 and 2 only, *claim* shall also mean any *employment claim* and for the purpose of Insuring Clause 3, *claim* shall also mean any *securities claim*.

For the purpose of Extension of Cover 3.12 'Pre-claim costs' only *claim* shall also mean a *pre-claim event*.

Any *claims* arising out of, based upon or attributable to related or continuous *wrongful acts* shall be considered to be a single *claim* for the purposes of this policy.

2.3 Clean up costs

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

2.4 Committee

committee means any compliance committee or any other committee, explicitly mentioned in the by-laws of the *insured entity*, which has been created to perform specific directional or supervisory acts on behalf of the *insured entity*.

2.5 Computer fraud

computer fraud means *loss* of the *insured's* money, *securities* or *property* due to any fraudulent or dishonest misuse or manipulation by a *third party* of the computer systems, programs or funds transfer systems owned or operated by the *insured*.

2.6 Corporate manslaughter proceeding

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

2.7 Corporate transaction

corporate transaction means any transaction involving the purchase or sale of shares, equity, debt or assets of any entity.

2.8 Counterfeit or Counterfeiting

counterfeit or *counterfeiting* means the intentional imitation of any currency notes or coins such that an *insured* is deceived on the basis of the quality of the imitation to believe that the imitation is the authentic original currency.

2.9 Criminal act

criminal act means any *internal crime* or *external crime*.

2.10 Data reconstitution costs

data reconstitution costs means reasonable costs (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, and the cost of their time or costs or overhead of any *insured*) incurred in the reproducing or amending the software programs or systems where such reproducing or amendment is necessary to correct damages caused to the programs or to amend the security codes following a *criminal act* in respect of the use of the computer hardware or software programs or systems owned and operated by the *insured* and which was the subject of a *loss* under this policy.

2.11 Deductible

deductible means the amount specified in the *schedule*.

2.12 Defence costs

defence costs means reasonable and necessary fees, costs, charges and expenses, other than remuneration payable to any *individual insured* or *employees* of the *insured entity*, incurred with our written consent (such consent shall not to be unreasonably withheld):

- (a) in the investigation, defence, adjustment, settlement or appeal of any *claim* made or brought against any *insured*; or
- (b) in the representation of any *insured* at any official examination, enquiry, *investigation* or other proceedings ordered or commissioned at the behest of an *official body* legally empowered to investigate the affairs of the *insured entity*.

Defence costs shall not include any fees, costs or expenses incurred prior to the time a matter becomes a *claim*.

2.13 Director or Officer

director or officer means:

- (a) members of the board of directors or supervisory board;
- (b) natural persons who are managers or act in a supervisory capacity;
- (c) members of the *insured entity's* internal audit departments;
- (d) natural persons who are deemed de facto directors; and
- (e) natural persons who are member of a *committee*,

in their capacity or function as a past, present or future *director or officer* of an *insured entity*.

2.14 Discovered or Discovery

discovered or discovery means the moment on which the *insured* or any partner, *director or officer*, departmental head or other senior manager or the equivalent thereof, not in collusion with any person(s) committing the *criminal act*, becomes aware of any fact or facts that give reasonable grounds to believe that *loss* as insured under this policy has been or may be incurred even though the exact amount or details of the *loss* may not then be known.

2.15 Employee

employee means any natural person who was, is or will be employed by the *insured entity* in the ordinary course of the *professional financial services* of the *insured entity* and whom the *insured entity* compensates by way of salary and wages and has the right to govern and direct the performance of that person's duties. *Employee* shall include:

- (a) any natural person under a contract of employment (be it full time, part-time or temporary) with the *insured entity*;
- (b) any natural person working under the direct control and supervision of the *insured entity*;
- (c) any *director or officer* of the *insured entity* when performing acts falling within the scope of the usual duties of an *employee* of the *insured entity* or when acting as a member of a *committee*;
- (d) any natural person who is a member of a *committee*.

For Insuring Clause 5 the definition of *employee* is extended to include:

- (e) any natural person whose identity the *insured* is unable to discover, but whose *criminal act* caused a *loss* under this policy and the evidence proves beyond reasonable doubt that the *loss* was sustained due to a *criminal act* of a person under (a), (b), (c) or (d) above.

The term *employee* does not mean an *outside service provider*, any independent broker, independent financial adviser, authorised representatives, or any similar agent or independent representative remunerated on a sale or commission basis unless specifically agreed by us and endorsed to this policy.

2.16 Employment claim

employment claim means a *claim* which is brought and maintained by any past, present, future or prospective employee(s) of the *insured entity* against any *individual insured* based on any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, violation of employment discrimination laws (including workplace harassment), wrongful failure to promote, wrongful discipline, wrongful deprivation of a career opportunity, negligent evaluation, invasion of privacy, employment-related defamation or employment-related infliction of emotional distress.

2.17 Extended reporting period

extended reporting period means the relevant period of cover arising or offered under Extension of Cover 3.9 'Extended reporting period' and/or Extension of Cover 3.19 'Retired Directors and Officers'.

2.18 External crime

external crime shall mean any fraudulent or dishonest single, continuous or repeated act(s) or a series of acts committed by a *third party* of:

- (a) *theft*;
- (b) *forgery*;
- (c) *fraudulent alteration*;
- (d) *counterfeiting*;
- (e) *computer fraud*;
- (f) *fraudulent induced transfer*;
- (g) crime not otherwise insured or excluded under this definition where the *third party* obtained *improper financial gain* and intended to cause the *insured entity* a *loss* and is found guilty and convicted by a final judgment in a recognised criminal court of law of such criminally sanctioned act.

external crime shall in no event mean:

- (i) *corporate transaction*;
- (ii) *voluntary exchange or purchase* unless covered under *forgery*, *fraudulent alteration*, *counterfeiting* or *computer fraud*;
- (iii) *extortion*.

2.19 Extradition costs

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

2.20 Extortion

extortion means any threat to personally injure *employees* or *directors* or *officers* or their family members, or to damage or destroy any *property* (including computer systems, software or programs) owned by the *insured* or for which the *insured* is legally liable, provided that prior to surrender of the money, *securities* or *property*, the person receiving the threat has made a reasonable effort to report the threat to another *employee* or *director* or *officer*, and the *insured* has made a reasonable effort to report the threat to the relevant authority.

2.21 Financial impairment

financial impairment means the status of the *insured entity* resulting from:

- (a) 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 *insured entity*;
- (b) the appointment by or on behalf of the *insured entity* of administrators; or
- (c) the *insured entity* being in receivership or liquidation.

2.22 Financial instrument

financial instrument means cheques, drafts or similar written promises, orders or directions to pay a certain sum of money that are made, drawn by or drawn upon an *insured* or by anyone acting or purporting to be acting as the *insured's* agent.

2.23 Forgery

forgery means:

- (a) the signing by hand of another natural person's name; or
- (b) the endorsing or amending by hand without authority,

of any cheque, draft, promissory note or bill of exchange given or received by an *insured* with the intent to deceive in consequence of which the *insured* has acted or transferred funds or goods.

Mechanically or electronically produced or reproduced signatures shall be treated as hand written signatures.

2.24 Fraudulent alteration

fraudulent alteration means a material alteration to any *financial instrument* for a fraudulent or dishonest purpose by a person other than the person who was authorized to sign such *financial instrument*.

2.25 Fraudulent Induced Transfer

fraudulent induced transfer means loss of *property*, on deposit in the *insured entity's* own account, resulting directly from a transfer made on the good faith reliance upon a fraudulent instruction:

- (a) transmitted to the *insured entity* or *employee* via an electronic mail, telefacsimile, telephone or other written instruction received by the *insured entity* or *employee* that is not in collusion with the sender of the fraudulent instruction; and
- (b) that purports, and reasonably appears, to have originated from:
 - (i) an *employee* specifically authorised by the *insured entity* to make such instruction; or
 - (ii) a *vendor* authorised by the *insured entity*,

but the sender of the fraudulent instruction was, in fact, impersonating such *employee* or *vendor* and the impersonated *employee* or *vendor* had no knowledge of or consent to the fraudulent instruction; and

- (c) contains a misrepresentation of material fact reasonably relied upon that directs the *insured entity* or *employee* to transfer, pay, or to change the method, destination or account for payments to the sender of the fraudulent instruction, provided the *insured entity* or *employee* performed a *transfer verification* prior to such transfer of *property*.

2.26 Identity expenses

identity expenses means reasonable and necessary:

- (a) *legal fees, costs and expenses* incurred by the *insured* with our prior written consent:
 - (i) to correct or reinstate official public records;
 - (ii) when applying for civil proceedings to be dismissed or withdrawn on the basis that the alleged liability resides with the perpetrator of the *identity theft*, and not the *insured* or its *directors* or *officers*;
 - (iii) when applying for criminal proceedings to be dismissed or withdrawn on the basis that the alleged offence was not committed by the *insured* but by the perpetrator of the *identity theft*;
- (b) fees, costs and expenses of a professional private investigation specialist, incurred by the *insured* with our prior written consent, to investigate the identity of the perpetrator and their method of operation in respect of an *identity theft*;

- (c) costs of rewriting or amending the *insured's* software programs or systems with our prior written consent where such rewriting or amending is necessary to correct the programs or amend the security codes following an *identity theft*;
- (d) fees, costs and expenses incurred and paid by the *insured*, with our prior written consent, to procure public relations services to redress adverse publicity or injury to their reputation due to an *identity theft*.

2.27 Identity theft

identity theft means the *theft* or fraudulent modification, alteration or corruption by an *employee* or *third party* of:

- (a) information or data relating to a natural person's identity as a duly appointed *director* or *officer* of the *insured*, and the purpose of which is to publicly document, authenticate or prove the genuine identity, official status or good standing of such natural person; or
- (b) publicly available information or data on file or within the computer system of an *insured* or an official registry or of any other party which relates to the *insured's* genuine identity and the purpose of which is to publicly document, authenticate or prove the existence and good standing of the entity or which may be relied upon by investors, financial organisations, vendors, credit reporting authorities and others in assessing and establishing the *insured's* credit ratings and / or good standing.

2.28 Improper financial gain

improper financial gain means any person gaining any *property*, money or *securities* from the *insured* to which that person was not legally entitled to. *Improper financial gain* shall in no event include salaries, bonuses, fees, commissions, promotion, emoluments or other remuneration.

2.29 Individual insured

individual insured means for purposes of:

- (a) Insuring Clauses 1 and 2, a *director* or *officer* of the *insured entity*; and
- (b) Insuring Clause 4, any *employee* of the *insured entity*.

2.30 Insured

insured means the *insured entity* and the *individual insured(s)*.

'You' and 'Your' is also used in this policy to mean one or more of the *insured*.

2.31 Insured entity

insured entity means the policyholder and any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy).

insured entity also means the *investment structure(s)*.

2.32 Internal crime

internal crime means any fraudulent or dishonest single, continuous or repeated act(s) or series of acts committed by an *employee* acting alone or in collusion with others to cause a *loss* to the *insured* or to obtain an *improper financial gain* from the *insured*.

In respect of any *internal crime* committed by any *employee* who is engaged in trading or dealing in stocks, shares, equities, bonds, *securities*, valuable papers, commodities, foreign exchange, derivatives, loans, *transactions* in the nature of a loan or other extension of credit and the like, the *insured* must prove that such *internal crime* was committed by the *employee* with the intention of causing the *insured* to suffer such *loss* or to obtain an *improper financial gain* for that *employee* or for any other individual or organisation.

2.33 Investigation

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

It does not include any investigation, hearing or inquiry brought or commenced, in whole or in part:

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of,

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

2.34 Investigation costs

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

For the purpose of Insuring Clause 5 *investigation costs* means all reasonable and necessary costs incurred by the *insured* to establish the amount of a *loss* (other than remuneration payable to any *employee*, *partner*, *director* or *officer* of any *insured*, cost of their time or costs or overhead of any *insured*) with our written consent in connection with a covered *loss* to be paid under this policy where the *loss* is excess of the applicable *deductible*.

2.35 Investment structure

investment structure means each investment fund, investment management company, undertaking for collective investment or any other similar entity on or before the inception date of this policy.

2.36 Limit of liability

limit of liability means the amount specified in the *schedule*.

2.37 Loss

In Insuring Clauses 1, 2, 3 and 4 *loss* means, as applicable:

- (a) *defence costs*;
- (b) *pre-claim costs* (under Extension of Cover 3.12 'Pre-claim costs');
- (c) *investigation costs*;
- (d) settlements negotiated with our prior written consent;
- (e) 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) which any *insured* becomes legally liable to pay;
- (f) compensatory fines and pecuniary penalties which an *individual insured* is legally obligated to pay;
- (g) punitive, exemplary or aggravated damages provided we are not prohibited by law from paying such damages in the jurisdiction in which the *claim* is determined;
- (h) the multiple portion of any multiplied damages award provided we are not prohibited by law from paying such damages in the jurisdiction in which the *claim* is determined;
- (i) *public relations expenses* (under Extension of Cover 3.7 'Crisis containment');
- (j) *civil or bail bond expenses* (under Extension of Cover 3.13 'Civil or Bail bond expenses');
- (k) *extradition costs* (under Extension of Cover 3.16 'Extradition costs'); and
- (l) *prosecution costs* (under Extension of Cover 3.18 'Prosecution costs').

In respect of any *claim* covered under this policy, *loss* shall not include:

- (i) wages, salaries or other remuneration of any *insured*;
- (ii) the cost of complying with any settlement for or award of non-monetary relief;
- (iii) any employment-related benefits;
- (iv) fines and pecuniary penalties that we are legally prohibited from paying, 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) non-pecuniary damages;
- (vi) taxes;
- (vii) any amount that constitutes reduction, set off or return of fees or expenses, in whole or in part, paid to or charged for *professional financial services*;
- (viii) matters that may be deemed uninsurable under the law pursuant to which this policy is construed; or
- (ix) *clean up costs*; or
- (x) 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.

In Insuring Clause 5 *loss* means the direct financial loss of any *property*, money or *securities* sustained by an *insured entity* as a direct result of a *criminal act* and shall include *data reconstitution costs*.

We will not assert that any *defence costs*, or settlements incurred by *individual insureds* are uninsurable due to the *individual insureds'* actual or alleged violation of Section 11 or 12 of the United States Securities Act of 1933, as amended.

2.38 Mandate

mandate means an agreement in writing under which a client appoints the *insured entity* to manage a discrete portfolio of assets on behalf of such client.

2.39 Money laundering

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

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

2.40 Official body

official body means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the *insured entity* or *outside service provider* or the conduct of an *individual insured* in such capacity.

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

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

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of,

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

2.41 Outside service provider

outside service provider means any person or entity that is not an *insured*, that performs *professional financial services* at the direction or on behalf of the *insured entity* pursuant to a written contract between such person or entity and the *insured entity* the terms of which are openly stated in explicit language at the time of its making.

2.42 Pending or Prior Litigation Date

pending or prior litigation date means the Pending or Prior Litigation Date specified in the *schedule*.

2.43 Period of insurance

period of insurance means the period of time from the inception date to the expiry date specified in the *schedule* or the effective date of cancellation of this policy.

2.44 Policyholder

policyholder means the organisation specified in the *schedule*.

2.45 Pollutants

pollutants means but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals and waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

2.46 Pre-claim costs

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

- (a) to provide legal advice directly related to a *pre-claim event*; or
- (b) 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 any indemnity payable to any *individual insured* that the *insured entity* is legally entitled or obliged to make.

2.47 Pre-claim event

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

- (a) a raid on, or on site visit to, the *insured entity* by an *official body*, which involves the production, review, copying or confiscation of documents or interviews of such *individual insured*;
- (b) any formal written notification to an *official body* by the *insured entity* or by such *individual insured* of a suspected material breach of such *individual insured's* legal or regulatory duty; or
- (c) the receipt by such *individual insured* of a formal notice from an *official body* which legally compels such *individual insured* 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 *policy period*, or *extended reporting period*, if applicable. A *pre-claim event* shall be deemed to be 'first made' against an *individual 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.

2.48 Prior known fact

prior known fact means any fact or matter which:

- (a) an *insured* first became aware of prior to the commencement of the *period of insurance*; and
- (b) knew, or a reasonable *insured* would have considered, prior to the commencement of the *period of insurance*, might result in an allegation against an *insured* for a *wrongful act* based solely on the *insured's* provision of the *professional financial services*.

2.49 Professional financial services

professional financial services means the giving by the *insured* of financial, economic or investment advice or investment management services performed or required to be performed by any *insured entity* in respect of any *investment structure* or *mandate*:

- (a) in return for a fee, commission or other compensation; or
- (b) without compensation as long as such non-compensated advice and/or services are rendered in conjunction with advice and/or services rendered for compensation.

For clarification and not in limitation of the above, *professional financial services* includes:

- (i) the creation, operation and management of any *investment structure* by any *insured*;
- (ii) any *mandate* pursuant to a written contract;
- (iii) the marketing of any *investment structure* or *mandate* and the solicitation of potential investors in any such *investment structure* or *mandate*;
- (iv) portfolio management and asset allocation services;
- (v) *professional supervision*;
- (vi) administration, custodial or registry services;
- (vii) responsible entity and trustee services; or
- (viii) publications prepared or written by any *insured* for or on behalf of any *investment structure* or *mandate* or any client.

2.50 Professional supervision

professional supervision means an *insured's* selection of an *outside service provider* and their oversight and direction of the performance of such *outside service provider* in providing *professional financial services*.

2.51 Property

property means tangible property of an *insured* other than money or *securities*.

2.52 Prosecution costs

prosecution costs means the reasonable legal costs and expenses incurred by an *individual insured* with our written consent in taking legal proceedings under Extension of Cover 3.18 'Prosecution costs'.

2.53 Public relations expenses

public relations expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an *individual insured* in the reasonable exercise of his/her discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of a *claim*.

2.54 Schedule

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

2.55 Securities

securities means any bond, debenture, note, share, stock or other equity or security for debt, and will include 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 representing money or *property*. *Securities* shall not include money or *property*.

2.56 Securities claim

securities claim means a *claim* against the *insured entity* that:

- (a) is brought by a security holder of the *insured entity*:
 - (i) in his, her or its capacity as a security holder of such *insured entity*, with respect to his, her or its interest in *securities* in the *insured entity*; or
 - (ii) on behalf of or in the name of the *insured entity* (in the form of a shareholder 'derivative action' or its equivalent) against an *insured*; or
- (b) is brought by any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities* and alleges that the *insured entity* or any of its *individual insureds* violated a government, federal, state, provincial, local or foreign securities law or a rule or regulation promulgated under such securities law, including but not limited to the Financial Markets Conduct Act 2013, the Companies Act 1993, Financial Services and Markets Act 2000 of the United Kingdom, United States Securities Act of 1933 and the United States Securities Exchange Act of 1934, whether or not in connection with the purchase, sale or offer to purchase or sell *securities* in the *insured entity*, but, with regard to Insuring Clause 3 of this policy, only if and so long as such *securities claim* against the *insured entity* is also made, and is continuously maintained, against a *director or officer*,

which alleges a *wrongful act*.

2.57 Self report

self report means a written report or notification to an *official body* by the *insured entity* or an *individual insured* 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*.

2.58 Submission

submission means:

- (a) any information and/or statements or materials;
- (b) any proposal form completed and signed by the *policyholder* (including any attachments thereto, information included therewith or incorporated therein); and
- (c) 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.

2.59 Subsidiary

subsidiary means any company in which the *policyholder* either directly, or indirectly through one or more of its *subsidiaries*:

- (a) controls the composition of the board of directors; or
- (b) controls more than half of the voting power; or
- (c) holds more than half of the issued share capital,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *insured entity* pursuant to the Financial Reporting Act 2013 or the applicable New Zealand accounting standard.

Cover in respect of:

- (i) any *individual insured* of any *subsidiary*; or
- (ii) any *subsidiary*,

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

2.60 Terrorism

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

2.61 Theft

theft means the intentional permanent deprivation of money, *securities* or *property*.

2.62 Third party

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

2.63 Trade secret

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

2.64 Transaction

transaction means any one of the following events:

- (a) the *policyholder* consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (b) another organisation, person or group of organisations or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organisation(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of the members of the board of directors of such *policyholder*; or
- (c) the compulsory or voluntary bankruptcy, liquidation or receivership of the *policyholder* or of an *insured entity*; or
- (d) the *policyholder* becomes controlled by another entity by virtue of any law.

2.65 Transfer verification

transfer verification means with respect to:

- (a) an *employee*, verification in accordance with the *insured entity's* internal control procedures disclosed to and approved in writing by us;
- (b) a *vendor*, verification by a callback and response according to a prearranged procedure or other verification procedure disclosed to and approved in writing by us,

which verifies the identity and authenticity of the purported sender and instructions for transfer.

2.66 Vendor

vendor means any entity or natural person who provides the *insured entity* with services, products or goods for a fee or other monetary consideration and that are provided under a written contract.

2.67 Voluntary exchange or purchase

voluntary exchange or purchase means the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of money, *securities* or *property* in any exchange or purchase.

2.68 Wrongful act

- (a) In Insuring Clauses 1 and 2 *wrongful act* means any actual, alleged or attempted breach of duty, breach of trust, breach of contract, breach of warranty of authority, neglect, error, misstatement, misleading statement, or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by any *individual insured* whilst acting in the capacity of a *director or officer* of the *insured entity* or any matter claimed against any *individual insured* solely by reason of his/her status as such.
- (b) In Insuring Clause 3 *wrongful act* means any actual, alleged or attempted breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by *insured entity*, but only with respect to a *securities claim*.
- (c) In Insuring Clause 4 *wrongful act* means any act, error or omission committed by the *insured*, arising out of the provision of, or failure to provide *professional financial services* including but not limited to, any error, misstatement, misleading statement, neglect, breach of duty or breach of trust committed, attempted or allegedly committed or attempted, by an *insured*, an *outside service provider* or any person for whose acts an *insured entity* becomes legally liable, while performing or failing to perform *professional financial services*, or any other matter claimed against the *insured*, an *outside service provider* or any person for whose acts the *insured entity* becomes legally liable, which arises solely by reason of their performing or failing to perform *professional financial services*.

3. Extensions of Cover

Cover is automatically provided, and on the same terms and in the same manner as in the Insuring Clauses (except as expressly stated), as described below. Each Extension of Cover is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it. No Extension of Cover shall increase our *limit of liability* unless expressly stated otherwise.

Extensions of Cover applicable to all Insuring Clauses

3.1 Late arising extensions

If during the *period of insurance* we:

- (a) issue a new version of our Asset Investment Managers Insurance policy in the country where the *policyholder* is incorporated (as specified in the *schedule*); or
- (b) make available a standard endorsement providing enhancements of cover to the current version of our Asset Investment Managers 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, subject to all underwriting information or particulars as we may require, from the date it is available.

This extension shall not apply:

- (i) in the event of *financial impairment* at the time such new version or endorsement becomes available;
- (ii) during any *extended reporting period*; or
- (iii) in the event of a *transaction* before or at the time such new version or endorsement becomes available.

3.2 New investment structures / Mandate

Cover under this policy is extended to any new *investment structure* or *mandate* which the *policyholder* first creates after the inception of this policy unless such *investment structure* or *mandate*:

- (a) is incorporated, formed or based in the United States of America, or any state, territory or possession thereof and has no *subsidiary* based in the United States of America, or any state, territory or possession thereof; or
- (b) is engaged in substantially different activities than the *investment structures* or *mandate* listed in endorsement attaching to this policy.

If a newly created *investment structure* or *mandate* falls into (a) or (b) above, such entity will be covered as a *investment structure* or *mandate* under this policy, but only for a period of 90 days from the date the *policyholder* first created such *investment structure* or *mandate*, or until the end of the *period of insurance*, which ever occurs first, provided the *policyholder* pays any additional premium required by us in connection with such new *investment structure* or *mandate*. We may at our sole discretion extend coverage for any such *investment structure* or *mandate* beyond the 90 day period, if during the 90 day period:

- (i) the *policyholder* requests an extension of this policy for such *investment structure* or *mandate* in writing to us; and
- (ii) the *policyholder* gives us sufficient details to permit us to assess and evaluate the potential increase in exposure; and
- (iii) the *policyholder* agrees to any additional premium and amendments to the policy required by us at our sole discretion relating to such new *investment structure* or *mandate*.

Unless otherwise agreed in writing and attached as an endorsement to this policy, cover for any *claim* against an *insured* of any *investment structure* or *mandate* shall apply only for *wrongful acts* committed while such entity is an *investment structure* or *mandate* of the *policyholder*.

3.3 New subsidiaries

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

- (a) has total assets which are greater than 10% of the total consolidated assets of the *policyholder* as detailed in their latest annual report as at the date of acquisition or creation;
- (b) is incorporated, formed or based in the United States of America, or any state, territory or possession thereof;
- (c) had during the last 5 years professional liability claims that exceeded 50% of the amount of the *deductible* of this policy as mentioned in the *schedule* of this policy; or
- (d) performs *professional financial services* that are significantly different from the services rendered by the *policyholder*.

If a newly acquired or created *subsidiary* falls into (a), (c) or (d) above, such entity will be covered as a *subsidiary* under this policy, but only for a period of 90 days from the date the *policyholder* either directly or indirectly through one or more of its *subsidiaries* first acquired or created such *subsidiary*, or until the end of the *period of insurance*, which ever occurs first, provided the *policyholder* pays any additional premium required by us in connection with such new *subsidiary*. We may at our sole discretion extend coverage for any such *subsidiary* beyond the 90 day period and for any *individual insured* thereof, if during the 90 day period:

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

Unless otherwise agreed in writing and attached as an endorsement to this policy, cover for any *claim* against an *insured* of any *subsidiary* shall apply only for *wrongful acts* committed while such entity is a *subsidiary* of the *policyholder*.

3.4 Cessation of Subsidiary, Benefit plan or Investment structure

This policy shall continue to provide cover for any:

- (a) *loss* sustained or incurred by any previously covered *subsidiary*, benefit plan or *investment structure* which ceases to be a *subsidiary*, benefit plan or *investment structure* during the *policy period*; or
- (b) *claim* made against the *insured entity* for *wrongful acts* committed by any previously covered *subsidiary*, benefit plan or *investment structure* which ceases to be a *subsidiary*, benefit plan or *investment structure* during the *period of insurance*.

Provided always that:

- (i) such *loss* or *claim* results from acts committed or events taking place in their entirety prior to the date a previously covered *subsidiary*, benefit plan or *investment structure* ceased to be covered under this policy;
- (ii) such *loss* is *discovered* or *claim* is first made during the *period of insurance*; and
- (iii) the *policyholder* (or any *subsidiary*, benefit plan or *investment structure* other than the sold *subsidiary*, benefit plan or *investment structure*) remains legally or contractually liable for such *loss* or *claim*.

Additional Extensions of Cover applicable to Insuring Clauses 1, 2, 3 and 4

3.5 Advancement of defence costs and other loss (including emergencies)

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

- (a) *defence costs*;
- (b) *pre-claim costs*;
- (c) *investigation costs*;
- (d) *public relations expenses*;
- (e) *civil or bail bond expenses*;
- (f) *extradition costs*; and
- (g) *prosecution costs*.

We will not rely on General Condition 5.5 'Defence, settlement and allocation' to deny indemnity or to refuse to advance *defence costs* under this Extension of Cover until the conduct in question has been finally established by written admission, court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency, our written consent cannot be reasonably obtained by the applicable *insured* before any of the above heads of *loss* are incurred, the *insured* shall have the right to incur such amounts without that consent for a period of 30 days immediately following the date on which the relevant head or heads of *loss* was or were first incurred.

In the event of an emergency, as referred to above, the sub-limit is 10% of the *limit of liability* for all *claims* by all *insureds* in the aggregate.

Any advance payments to an *insured* that have been made by us shall be repaid by the person or entity to whom such payments have been made in the event that any such person or entity shall not be entitled under this policy to the payment in respect of such *loss*.

3.6 Continuous cover

Notwithstanding Exclusion 4.5 (b) 'Prior knowledge and Prior discovery' we will pay for *loss* arising from any *claim* first made against the *insured* during the *period of insurance* arising from a *prior known fact*, provided that:

- (a) the *insured* has maintained without interruption, an asset investment managers insurance policy or similar insurance policy with an insurer from the time the *insured* first became aware of such *prior known fact* until the commencement of the *period of insurance*;
- (b) the *insured* would have been indemnified under the asset investment managers insurance policy or similar insurance policy in force at the relevant time if the *prior known fact* had been notified to the applicable insurer when the *insured* first became aware of it;
- (c) neither the *claim* nor the *prior known fact* has earlier been notified to us or at any time to any insurer under any insurance policy;
- (d) there has been no fraudulent non-disclosure or misrepresentation to us in respect of the *prior known fact*; and
- (e) cover under this Extension of Cover will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

3.7 Crisis containment

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

The sub-limit for this Extension of Cover is the amount specified in the *schedule* for all *public relations expenses* for all *individual insured*. It is part of and is not in addition to the *limit of liability*.

3.8 Estates, Heirs and Legal personal representatives

We agree to pay for *loss* in respect of a *claim* first made against the estates, heirs, legal personal representatives or assigns of any deceased, incompetent, insolvent or bankrupt *individual insured* during the *period of insurance* provided such *claim*:

- (a) is made against them solely because of their status as estates, heirs, legal personal representatives or assigns of that deceased, incompetent, insolvent or bankrupt *individual insured*; and
- (b) would be covered under this policy if made against that *individual insured*.

3.9 Extended reporting period

- (a) In the event of a non renewal, other than for non-payment of premium, the *policyholder* shall be entitled to a single *extended reporting period* of:

- (i) 90 days, at no additional premium, automatically; or
- (ii) 12 months, at the additional premium required by us and provided that there has been no *transaction*,

after the expiry of the *period of insurance*, in relation to:

1. any *pre-claim event* that takes place or occurs;
2. any *claim* made against any *insured*; and
3. any *investigation* where the legal requirement on the *individual insured* to attend first arises, during such *extended reporting period*, but only with respect to any *wrongful act* or conduct allegedly committed prior to the expiry date of the *period of insurance*.

The entitlement under (ii) above shall lapse unless the *policyholder* makes a written request no later than thirty (30) days after the expiry date of the *period of insurance* and pay the additional premium required.

- (b) In the event of a *transaction*, the *policyholder* may purchase an *extended reporting period* of up to eighty four (84) months after the effective date of the *transaction* in relation to:
1. any *pre-claim* event that takes place or occurs;
 2. any *claim* made against any *insured*; or
 3. any *investigation* where the legal requirement on the *individual insured* to attend first arises, during such selected *extended reporting period*, but only with respect to any *wrongful act* or conduct allegedly committed prior to the effective date of the *transaction*.
- The *policyholder* must make a written request for such *extended reporting period* no later than thirty (30) days after the *transaction* and pay the additional premium required (less any unearned premium for this policy). This Extension of Cover 3.9 (b) will not apply in the event of *financial impairment* of the *insured* or the appointment of an external administrator
- (c) The entitlement to an *extended reporting period* in (a) (ii) or (b) above is subject to such terms and conditions we may require. Further, and subject to (d) below, cover is only available under this coverage extension if the applicable additional premium has been paid by the *policyholder*, as required by us.
- If the *policyholder* selects an *extended reporting period* under (a) (ii) or (b) above, the *policyholder* and the *insured* shall not have a right to an *extended reporting period* under (a) (i) above.
- (d) The right to an *extended reporting period* under (a) (ii) or (b) above shall terminate:
- (i) unless written notice is given to us by the *policyholder*, no later than 30 days after the effective date of the non-renewal of this policy or *transaction*, of its intention to elect an *extended reporting period* under (a) (ii) or (b) above; and
 - (ii) unless as a condition precedent to an *extended reporting period* under (a) (ii) or (b) above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the *extended reporting period* shall be deemed fully earned at its commencement and non-refundable; and
 - (iii) immediately upon the effective date of any asset investment managers insurance policy or similar contract of insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage.
- This clause also applies to an *extended reporting period* under (a) (i) above.
- (e) The *insured* agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability* or other terms, conditions or exclusions) this does not constitute a refusal by us to renew.
- (f) Nothing in this Extension of Cover increases the *limit of liability*.

3.10 Marital estates

We agree to pay for *loss* in respect of a *claim* first made against the lawful spouse or domestic partner of an *individual insured* during the *period of insurance* and notified to us during the *period of insurance* provided such *claim*:

- (a) is made solely because of his or her status as the lawful spouse or domestic partner of that *individual insured*; and
- (b) would be covered under this policy if made against that *individual insured*; and
- (c) seeks damages recoverable from the marital community property, or from property jointly held by that *individual insured* and the lawful spouse or domestic partner, or from property transferred from that *individual insured* to the lawful spouse or domestic partner.

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

3.11 Representation and Investigation costs

We shall pay any reasonable and necessary *investigation costs*, incurred with our prior written consent, resulting from any legally required attendance by any *individual insured* at any official *investigation*, examination or inquiry in relation to the activity or affairs of the *insured entity*, which is instigated by an *official body* to conduct the *investigation*, examination or inquiry and provided that the notice requiring the *individual insured* to attend at any such official *investigation*, examination or inquiry is received by the *individual insured* during the *period of insurance*.

This Extension of Cover does not apply to:

- (a) fees, costs and expenses attributable to any official *investigation*, examination or inquiry of general nature or arising from an event which affects the industry in which the *insured entity* conducts its *professional financial services* as a whole;
- (b) fees, costs and expenses incurred or sustained in the United States of America or in any state, territory or possession thereof or in connection with an official *investigation*, examination inquiry or other similar proceeding commenced or brought in the United States of America or in any state, territory or possession thereof; or
- (c) wages, salaries or other internal costs or remunerations.

The total aggregate *limit of liability* for fees, costs and expenses that we shall be liable to pay pursuant to the cover provided by this Extension of Cover is specifically sub-limited to ten percent (10%) of the *limit of liability*. This sub-limit is part and not in addition to the total aggregate *limit of liability* specified in the *schedule* and will in no way serve to increase our *limit of liability* as specified therein.

Additional Extension of Cover applicable to Insuring Clause 1

3.12 Pre-claim costs

We agree to pay to or on behalf of an *individual insured* *pre-claim costs*.

Additional Extensions of Cover applicable to Insuring Clauses 1 and 2

3.13 Civil or Bail bond expenses

We agree to pay to or on behalf of an *individual insured* *civil or bail bond expenses* incurred in respect of a *claim* covered under this policy, including but not limited to an extradition proceeding.

The sub-limit for this Extension of Cover is the amount specified in the *schedule* for all *civil or bail bond expenses* for all *individual insureds*. It is part of and is not in addition to the *limit of liability*.

3.14 Employment claims

This policy covers *employment claims* against an *individual insured*.

3.15 Excess Limit of Liability for directors or officers

We will pay on behalf of any *director or officer* such *loss* as arises from or as a consequence of any *claim* first made against him or her either jointly or severally during the *period of insurance*, or any *extended reporting period*, by reason of a *wrongful act*, save to the extent that such *director or officer* is indemnified by the *insured entity*.

The coverage provided by this Extension of Cover shall be specifically excess of, and shall not drop down to be primary insurance until the exhaustion of:

- (a) the *limit of liability* applicable to Insuring Clauses 1, 2 and 3;
- (b) the *limit of liability* of all other applicable directors and officers or management liability or indemnity insurance policies written as specific excess over this policy, or otherwise; and
- (c) all other indemnification for *loss* available to any *director or officer*.

Our maximum liability, in the aggregate, under this Extension of Cover for all *loss* arising from all *claims* made during the *period of insurance* against any single *director or officer* shall be the Director or Officer Excess *limit of liability* specified in the *schedule*. The Director or Officer Excess *limit of liability* shall be a separate *limit of liability* for each *director or officer* and applicable only to that *director or officer*.

The Director or Officer Excess *limit of liability* shall not be part of and shall be in addition to the *limit of liability* applicable to Insuring Clauses 1, 2 and 3.

Our maximum liability, in the aggregate, under this Extension of Cover for all *loss* arising from all *claims* made against all *director or officers* shall be the Aggregate Director or Officer Excess *limit of liability* specified in the *schedule*.

3.16 Extradition costs

We agree to pay to or on behalf of:

- (a) an *individual insured* extradition costs (where permitted by law) in respect of a *claim* covered under this policy;
- (b) an *individual insured* the reasonable fees incurred by such *individual insured*, with our prior written consent, of a counsellor or tax adviser in respect of a covered *claim* which is an extradition proceeding; and
- (c) the lawful spouse or domestic partner of an *individual insured* in (a) above, the reasonable travel, accommodation and living-away-from-home expenses in attending any hearing of such extradition proceeding against that *individual insured*.

The sub-limit for all fees and expenses for *claims* payable under (b) and (c) above is limited to 10% of the *limit of liability*.

3.17 Pollution cover

Exclusion 4.4 'Pollution' of this policy shall:

- (a) not apply to any *pollutant* related *claim* brought by a shareholder of the *insured entity* in his or her capacity as such, whether directly or derivatively alleging damage to the *insured entity* or its shareholders, provided that such *claim* is brought and is continuously maintained without the solicitation, voluntary assistance, or active participation of any *director or officer*;
- (b) not apply, in respect of *pollutant* related *claims* other than in Extension of Cover 3.17 'Pollution cover' (a) above, to *defence costs* incurred by any *individual insured*. The maximum *limit of liability* for all *defence costs* under this Extension of Cover 3.17 (b) 'Pollution cover' shall be specified in the *schedule* which shall be part of and not in addition to the *limit of liability* of this policy; and
- (c) continue to apply to *clean up costs* notwithstanding anything in this Extension of Cover.

3.18 Prosecution costs

We agree to pay for or on behalf of an *individual insured* all *prosecution costs* in the *individual insured* taking legal proceedings:

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

- (ii) a judicial order entered during the *period of insurance* imposing:
 1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *individual insured*;
 2. a charge over real property or personal assets of such *individual insured*;
 3. a restriction of such *individual insured's* liberty to a specified domestic residence or detention facility; or
 4. deportation of an *individual insured* following revocation of otherwise current and valid immigration status for any reason, other than such *individual insured's* conviction of a crime.

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

3.19 Retired Directors and Officers

If the *policyholder* does not renew or replace this policy with any other policy issued by us or any other insurer affording directors and officers liability cover and an *extended reporting period* is not elected under Extension of Cover 3.9 'Extended reporting period', an *extended reporting period* of 84 months, effective the date of such non-renewal will be provided under this policy during which time written notice may be given to us under Insuring Clauses 1 and 2 of this policy of any *claim* first made against any *individual insured* who retired before the date of the non-renewal of this policy and notified in writing to us during the *period of insurance*, but only for *wrongful acts* of such *individual insured* committed prior to the date of the non-renewal, and otherwise covered under the terms and conditions of this policy. This Extension of Cover is not available in the event of a *transaction*.

3.20 Tax liability

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

3.21 Workplace health and safety

Notwithstanding Exclusion 4.1 'Bodily injury / Property damage', we will pay to or on behalf of an *individual insured* any *defence costs* which arise from any *claim* by an *official body* against such *individual insured* 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*.

Additional Extensions of Cover applicable to Insuring Clause 4

3.22 Loss of documents

Notwithstanding Exclusion 4.1 'Bodily injury / Property damage' if during the currency of this policy the *insured* shall discover that any documents, the property of or entrusted to the *insured* which now or hereafter are or are by them supposed or believed to be in their hands or in the hands of any other party or parties to or with whom such documents have been entrusted, lodged or deposited by the *insured* and have been destroyed or damaged or lost or mislaid and after diligent search cannot be found this policy shall indemnify the *insured* for:

- (a) any liabilities of whatsoever nature which they may incur in consequence of such documents having been so destroyed, damaged, lost or mislaid; and/or
- (b) all costs, charges and expenses of whatsoever nature incurred by the *insured*, in replacing and/or restoring such documents.

3.23 Mitigation costs following Professional Liability

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

It is agreed that we will only be liable to indemnify the *insured* where we are satisfied that:

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

We shall not be liable for:

- (i) costs or expenses to which we have not consented;
- (ii) internal or overhead expenses of the *insured* other than those involved in taking immediate action which prevents, limits or mitigates exposure to a claim;
- (iii) salary or remuneration of any *employee*;
- (iv) the amount of any *deductible*; or
- (v) any increase in liability for any claim made against the *insured* arising from taking such action. The maximum that we will pay in the aggregate for such costs, expenses or other loss is the Mitigation costs following Professional Liability sub-limit of liability stated in the *schedule*.

Additional Extensions of Cover applicable to Insuring Clause 5

3.24 Care, Custody and Control

We shall indemnify the *insured entity* for the *loss* of *property*, money or *securities* which is under the control and custody of an *insured* and for which such *insured* is legally liable.

3.25 Fraudulent induced transfer

We shall indemnify the *insured entity* for their *loss* caused by *fraudulent induced transfer* first sustained by the *insured entity* and *discovered* during the *period of insurance*.

The maximum that we will pay in the aggregate for *fraudulent induced transfer* is the Fraudulent Induced Transfer sub-limit of liability stated in the *schedule*.

3.26 Interest

We shall indemnify the *insured entity* for the amount of any interest receivable or payable by the *insured entity* resulting directly from a *loss* covered by this policy provided that our liability for such interest receivable or payable is calculated by applying the average base rate in force by the Reserve Bank of New Zealand, between the time of sustaining such *loss* and the date of *discovery* of such *loss*.

The maximum that we will pay in the aggregate for such interest receivable or payable is the Interest sub-limit of liability stated in the *schedule*.

3.27 Investigation costs

We shall indemnify the *policyholder* for *investigation costs* incurred by an *insured*, which are directly related to a *loss* covered under this policy.

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

3.28 Mitigation costs following Internal or External fraud

We will indemnify the *insured entity* for costs and expenses that are reasonable and necessary and incurred directly by the *insured entity* taking action before notification to us after *discovery* during the *period of insurance* of a covered *criminal act* where such action prevents, limits or mitigates the *insured's* exposure to actual or potential covered *loss*.

It is agreed that the burden of proving that the covered *criminal act* would be covered under this policy shall rest with the *insured entity*.

We shall not be liable for:

- (a) internal or overhead expenses of the *insured* other than those involved in taking immediate action which prevents, limits or mitigates its exposure to *loss*;
- (b) salary or other remuneration of any *employee*;
- (c) the amount of any *deductible* applicable; or
- (d) any increase in *loss* or *losses* sustained by the *insured entity* arising from taking such action. The maximum that we will pay in the aggregate for such costs and expenses is the Mitigation costs following Internal or External Fraud sub-limit of liability stated in the *schedule*.

3.29 Stop payment order

We shall indemnify the *insured entity* for direct *loss* sustained by the *insured* as a result of the *insured entity* or an *outside service provider* acting on behalf of the *insured entity* having:

- (a) complied or failed to comply with the request of any client or customer of the *insured entity*, or an authorised agent of such client or customer, to stop payment on; or
- (b) refused to pay any cheque or draft made or drawn upon or against the *insured entity* by such client or customer or by an authorised agent of such client or customer.

Provided always that there shall be no such indemnity where the *insured entity* have acted in accordance with an instruction received by or on behalf of or at the behest of any government, governmental body, regulatory body or governmental agency.

Optional Extensions of Cover applicable to Insuring Clause 5

Cover if shown in the *schedule* is provided, and on the same terms and in the same manner as in the Insuring Clause 5 (except as expressly stated), as described below. Each Optional Extension of Cover is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it. No Optional Extension of Cover shall increase our *limit of liability* unless expressly stated otherwise.

3.30 Business interruption

We shall indemnify the *insured entity* for any reasonable Additional Costs incurred during the Indemnification Period and after the Waiting Period caused by a *loss* covered under this policy provided that these Additional Costs are beyond the *insured's* usual operational costs and necessary to the restoration of the normal course of operations of the *insured's* business.

For the purpose of this Extension of Cover:

- (a) Additional Costs shall mean:
 - (i) renting fee for temporary replacement equipment and temporary additional premises;
 - (ii) costs of additional external workforce and overtime of *employees*;
 - (iii) costs related to transportation of equipment or documents,which have been incurred by the *insured* in which the *loss* has been *discovered*.
- (b) Waiting Period shall mean the period of 48 hours starting from the *discovery* of the *loss*.
- (c) Indemnification Period shall mean the period of 90 days immediately starting after the Waiting Period.

3.31 Data reconstitution costs

We shall indemnify the *insured entity* for reasonable data *reconstitution costs*.

3.32 Extortion

We shall indemnify the *insured entity* for any *loss* due to *extortion* committed by an *employee* of an *insured*.

3.33 Identity theft

We shall indemnify the *insured* for *identity expenses* following *identity theft* first sustained by the *insured* and *discovered* during the *period of insurance*.

The maximum that we will pay in the aggregate for *identity expenses* is the Identity Theft sub-limit of liability stated in the *schedule*.

4. Exclusions

Exclusions applicable to all Insuring Clauses

We shall not be liable to make any payment for *loss* or *claims* under any of the Insuring Clauses of this policy or any payment under any Extension of Cover of this policy in connection with *loss* or *claims*:

4.1 Bodily injury / Property damage

alleging, arising out of, based upon or attributable to or in any way connected with bodily injury, sickness, emotional or mental distress, disease or death of any person, or *loss* of or damage to or destruction of any *property* from any cause, including the loss of use thereof, or the violation of any person's right of privacy. This exclusion does not apply to that portion of *claims* alleging emotional distress caused by an *employment claim*.

4.2 Insured versus Insured

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

- (a) an *insured*, or successors or assigns of any *insured*;
- (b) the *policyholder's* parent company (or any parent, *subsidiary* or affiliate thereof).

This exclusion shall not apply to any:

- (i) *claim* brought by an *insured* for contribution or indemnity, if the *claim* directly results from another *claim* otherwise covered under this policy as long as such *claim* is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*;
- (ii) *claim* brought by an *employee* as long as such *claim* is brought solely in such claimant's capacity as a customer or client of the *insured entity* and is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*;
- (iii) *claim* brought or maintained by an *insured entity* for and on behalf of members of an *investment structure* where, in the opinion of independent counsel selected by and at the expense of such *insured entity* (subject to our prior written consent, such consent not to be unreasonably withheld) the failure to make such *claim* would result in a breach of duty of such *insured entity*;
- (iv) *claim* brought or maintained by any member of a compliance *committee* or advisory board who brings and maintains the *claim* without the active assistance or participation of, or solicitation by any other *insured*;
- (v) *employment claim*;
- (vi) shareholder derivative action brought or maintained on behalf of the *insured entity* without the solicitation, assistance, active participation or intervention of any *insured*;
- (vii) *claim* brought or maintained by a liquidator, receiver or administrative receiver, or similar person under the laws of any other jurisdiction, either directly or derivatively on behalf of the *insured entity*, without the solicitation, assistance, active participation or intervention of any *insured*;

- (viii) *claim* brought or maintained by any former *director or officer*, partner, trustee or *employee* of the *insured entity* who has not served in that capacity for a period of at least 24 months prior to such *claim* being first made against any *insured*; or
- (ix) any *defence costs*.

4.3 Nuclear

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

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

4.4 Pollution

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

- (a) the actual, alleged or threatened discharge, release, escape or disposal of *pollutants* or contaminants into or on real or personal property, land, water or the atmosphere; or
- (b) any direction or request to test for, monitor, clean up, remove, treat, detoxify, neutralise or contain any *pollutant* or contaminants with which the *insured* is required to comply or for which the *insured* is responsible or any voluntary decision to do so.

4.5 Prior knowledge and Prior discovery

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

- (a) any *claim* or circumstances which were notified under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (b) any *prior known fact* that ought to have, but has not, been reported under any policy of which this policy is a renewal or replacement or which it may succeed in time; or
- (c) any litigation which was commenced, pending, settled or dismissed as of the *pending or prior litigation date*, or litigation against any *insured* derived from the same or essentially the same facts as alleged in such litigation as of the *pending or prior litigation date*.

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

4.6 Securities Act of 1933 and Securities Exchange Act of 1934

made against any *insured* based upon, arising from, or in consequence of an actual or alleged violation of any kind, of the Securities Act of 1933, the Securities Exchange Act of 1934, any rules or regulation of the Securities and Exchange Commission promulgated thereunder, any other federal, state, local or provincial statute relating to *securities*, or any rules or regulations promulgated thereunder, all as amended (however this exclusion shall apply to Insuring Clauses 1 and 2 only).

4.7 Terrorism

arising out directly or indirectly, caused by, resulting from or in connection with any act of *terrorism* regardless of any other cause or event contributing concurrently or in any other sequence thereto, or any action taken in controlling, preventing, suppressing or in any way relating to any act of *terrorism*.

4.8 War

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

4.9 Wrongdoing

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

- (a) the gaining of any profit or advantage to which the *insured* is not legally entitled;
- (b) the committing of any criminal, dishonest, fraudulent or malicious acts by an *insured*; or
- (c) any knowing or wilful violation of any law or regulation by an *insured*.

For the purpose of determining the applicability of these exclusions, the *wrongful act* of any *insured* shall not be imputed to any other *insured*. Furthermore, these exclusions shall only apply if it is established through a judgement, or any other final adjudication adverse to the *insured*, or any admission by an *insured* that the relevant conduct did in fact occur.

The above exclusion shall not apply to Insuring Clause 5.

Notwithstanding anything stated in this exclusion, exclusion 4.9 (a) will not apply in a *securities claim* against an *insured person* alleging violations of Sections 11, 12 or 15 of the U.S. Securities Act of 1933 to the portion of any *loss* attributable to such violations.

Additional Exclusion applicable to Insuring Clauses 1, 2 and 3

4.10 Professional services

With respect to Insuring Clauses 1, 2 and 3 of this policy, we shall not be liable to make any payment for *loss* or any payment under any Extension of Cover of this policy in connection with *claims* alleging, arising from, based upon, attributable to or as a consequence of the *insured* or any *outside entity's* or any *insured's* performance of or failure to perform professional services, or any act(s), error(s) or omission(s) relating thereto.

Additional Exclusion applicable to Insuring Clauses 1, 2, 3 and 4

4.11 Money laundering

With respect to Insuring Clauses 1, 2, 3 and 4 of this policy, we shall not be liable to make any payment for *loss* or any payment under any Extension of Cover of this policy in connection with *claims* alleging, arising out of, based upon or attributable to or in any way connected with any actual or alleged act of *money laundering*.

Additional Exclusions applicable to Insuring Clause 4

With respect to Insuring Clause 4 of this policy, we shall not be liable to make any payment for *loss* or any payment under any Extension of Cover of this policy in connection with *claims*:

4.12 Contractual liability

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

4.13 Fees, Commissions or Other compensation

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

4.14 Insolvency

alleging, arising out of, based upon or attributable to or in any way connected with the suspension of payment by any broker or dealer in *securities* or commodities, or any buyer, seller or underwriter of *securities* or commodities, or financial organisation other than the *insured entity*.

Additional Exclusions applicable to Insuring Clause 5

With respect to Insuring Clause 5 of this policy, we shall not be liable to make any payment for *loss* or any payment under any Extension of Cover of this policy:

4.15 Consequential loss

in connection with consequential loss directly or indirectly arising from or in connection with any *loss*, unless covered under Extension of Cover 3.26 'Interest', and Optional Extensions of Cover 3.30 'Business interruption' and 3.31 'Data reconstitution costs'.

4.16 External crime

in respect to *external crime* only, we will not pay anything in respect of:

4.16.1 Trade finance and Trade loans

loss resulting from the full or partial non-payment of or default under any:

- (a) credit agreement, extension of credit or hire purchase agreement;
- (b) loan or *transaction* of the nature of a loan;
- (c) lease or rental agreement; or
- (d) invoice, account, agreement or any other evidence of debt.

However, this exclusion shall not apply to any *loss* where the *insured* has relied or acted upon any document that contains *forgery*, *fraudulent alteration* or *counterfeit* of currency notes or coins.

4.16.2 Specific documents

any *loss* in connection with the *forgery*, *counterfeit* or *fraudulent alteration* of, on or in, any account receivable, or assignments thereof, bills of lading, warehouse or trust receipts, or receipts serving a similar purpose.

4.17 Fire

in connection with *loss* caused by any fire.

4.18 Fraudulent employee

in connection with *loss* caused by any *employee* whom the *insured* was aware had previously committed a *criminal act* before or after the date of commencement of employment by the *insured*.

4.19 Fraudulent induced transfer

in connection with any *loss* or any payment arising from the *insured entity* or an *employee* having made a *fraudulent induced transfer* unless the *fraudulent induced transfer* is covered under the Fraudulent Induced Transfer Extension of Cover applicable to Insuring Clause 5 and then only to the extent that such *loss* is covered under that Extension of Cover.

4.20 Information technology failure

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

4.21 Intellectual property rights and Trade secrets

in connection with any *loss* of or arising from the accessing of any confidential information including but not limited to *trade secrets*, computer programs, customer information, patents, trademarks, copyrights or processing methods, except to the extent that any such information is used to support or facilitate the committing of a *criminal act* covered by this policy.

4.22 Kidnap and Ransom

in connection with any *loss* arising from kidnap, ransom or any threat thereof.

4.23 Loss discovered outside the period of insurance

in connection with *loss* first *discovered* prior to the commencement of the *period of insurance* or after the expiry of the *period of insurance*.

If the first *criminal act* of a series of *criminal acts*, which are connected causally with another or which are by any means inter-related or inter-connected, was *discovered* prior to the commencement of the *period of insurance* or after the expiry of the *period of insurance*, the entire *loss* sustained by the *insured* will not be covered under this policy.

5. General Conditions

5.1 Assignment

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

5.2 Cancellation

- (a) The *policyholder* may cancel this policy at any time by giving notice in writing to us.
- (b) We may cancel this policy by notifying the *policyholder* in writing, if the *insured* is in breach of the terms or conditions, or for any other reason available at law. Notice of cancellation has the effect of cancelling this policy at 4.00pm on the 30th business day, after the day on which notice was sent to the *policyholder*.
- (c) Upon cancellation by the *policyholder* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.
- (d) Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.
- (e) However, in the event of the notification of a *loss* which is covered under the policy prior to cancellation, the premium shall be regarded as fully earned and may be retained by us.

5.3 Change of risk

If a *transaction* will take place during the *period of insurance*, the *policyholder* shall give written notice of such merger, consolidation or acquisition to us, as soon as practicable, together with all information as we may require.

Cover under this policy shall continue until the end of the *period of insurance*, but only for *wrongful acts* prior to such merger, consolidation or acquisition, unless we agree to cover *wrongful acts* committed after such *transaction* by endorsement after (a) receipt of a completed application and all information we may require and (b) acceptance by the *policyholder* of any amended terms and conditions, including any additional premium, required by us and at our sole discretion.

5.4 Deductible

We shall only be liable for the amount of *loss* arising from a *claim* that is in excess of the *deductible*, specified in the *schedule*. The *deductible* amount shall be borne by the *insured* and shall remain uninsured, with regard to all *loss* for which the *insured* shall be liable. A single *deductible* amount shall apply to all related or continuous *wrongful acts*.

5.5 Defence, settlement and allocation

- (a) It shall be the duty of any *insured* against which a *claim* is made to take all reasonable and necessary steps to defend such *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim* made against any *insured*.

With respect to any *claim* as may potentially be covered by this policy, we have the right to:

- (i) be provided with all such information as we shall reasonably require, at the *insured's* own cost;
- (ii) be kept fully informed as to all matters relating to or concerning the investigation, defence or settlement of any such *claim* and shall have the right to receive copies of all relevant documentation relating thereto; and
- (iii) associate effectively with the *insured* in the defence, investigation and the negotiation of any settlement of any *claim*.

- (b) 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). 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*.
- (c) In the event of any dispute regarding whether or not to contest any legal proceedings, which may be brought against any *insured*, the procedure detailed in this general condition shall apply. If legal proceedings are contested then the *insured* shall provide all such information and assistance as is reasonably required to those persons representing them.

If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.
- (d) The *insured* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs*, *investigation costs*, *extradition costs*, *pre-claim costs* or *prosecutions costs*, and no legal representative shall be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.
- (e) Only those settlements, consent judgments, *defence costs*, *investigation costs*, *extradition costs*, *pre-claim costs* and *prosecutions costs* that have been consented to by us in writing shall be recoverable as *loss* under the terms of this policy (other than as allowed under Extension of Cover 3.5 'Advancement of defence costs and other loss (including emergencies)').
- (f) We shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed. In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.
- (g) Our liability under this *policy* is limited to the proportion of *loss* which is a fair and equitable allocation:
 - (i) between the *insured* and any other uninsured person or entity (including the *insured entity*) where the *loss* has been jointly or jointly and severally incurred by them. Such allocation shall be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured* and those other persons or entities; and/or
 - (ii) between the *individual insureds*, the *insured entity* 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).

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*, *pre-claim costs*, *investigation costs*, *public relations expenses*, *civil or bail bond expenses*, *extradition costs* and *prosecution costs* in the proportion which we contend should be allocated to *loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs*, *pre-claim costs*, *investigation costs*, *public relations expenses*, *civil or bail bond expenses*, *extradition costs* and *prosecution costs* incurred prior to the date of such negotiation or determination.

5.6 Limit of liability

- (a) If a combined *limit of liability* for multiple Insuring Clauses is specified in the *schedule* then that *limit of liability* is our maximum liability in the aggregate under those Insuring Clauses for:
 - (i) all *loss* arising out of all *claims* first made; and
 - (ii) all *loss* resulting from any *criminal act* first *discovered*, during the *period of insurance* and any *extended reporting period* (if applicable).
- (b) If a *limit of liability* for a specific Insuring Clause is specified in the *schedule* then that *limit of liability* is our maximum liability in the aggregate under that Insuring Clause for all *loss* arising out of all *claims* first made or all *loss* resulting from any *criminal act* first *discovered* during the *period of insurance* and any *extended reporting period* (if applicable).
- (c) Where cover is provided for a *loss* under one or more Insuring Clauses, the applicable *claim* or *loss* shall not aggregate, however the higher *limit of liability* applicable to those Insuring Clauses shall apply.
- (d) A *claim* which is first made subsequent to the *period of insurance* but which pursuant to General Condition 5.10 'Other insurance' is considered made during the *period of insurance* shall also be subject to the *limit of liability* applicable to the relevant Insuring Clause.
- (e) We have no liability for any amount above the *limit of liability*, except as provided for in Extension of Cover 3.15 'Excess Limit of Liability for directors or officers'. *Defence costs* are not payable by us in addition to the *limit of liability*. *Defence costs* are part of *loss* and are subject to the *limit of liability* for *loss*.
- (f) If the *insured* is comprised of more than one entity, the *limit of liability* applies to the group of such entities as a whole.

5.7 Non-Disclosure and Misrepresentation waiver

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

- (a) against an *individual insured* who, before inception of this policy, knew the facts or matters not disclosed or misrepresented, and any company to the extent that it may indemnify such *individual insured*;
- (b) against the *insured entity* where any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position) of the *insured entity* or the holder of any equivalent position in a jurisdiction, knew the facts or matters not disclosed or misrepresented,

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

5.8 Notice

Every notice or communication to us shall be in writing. All notices or communications (apart from 'Notification of claims and loss' following) shall be given to the Financial Lines underwriter at our appropriate branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

5.9 Notification of claims and loss

For Insuring Clauses 1, 2, 3 and 4 the *insured* shall, as a condition precedent to payment under this policy, give written notice to us as soon as is reasonably practicable of:

- (a) any *claim* made against any *insured*; or
- (b) notice from any person or entity of an intention to make such a *claim*; or
- (c) any *investigation* as soon as is reasonably practicable after the *insured's* risk manager, compliance manager, General Counsel, Chief Legal Counsel or equivalent position first becomes aware of such *claim*, or such *investigation*, but in all events no later than 60 days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable); and
- (d) Written notice shall include a description of the *claim* or circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *insured* may be first became aware of the *claim* or circumstances, and
- (e) Should the *insured* become aware of any circumstances which could reasonably be expected to give rise at a later date to a *claim*, then written notice to us of such circumstances will be accepted as the date of notification of a *claim* under the policy, provided that such written notice of such circumstance shall make reference to the *wrongful act* which may give rise to a *claim*, and the material facts which give rise to the belief that a *claim* may be made.

For Insuring Clause 5 the *insured* as a condition precedent to the right to be indemnified under this policy shall as soon as reasonably possible upon the *discovery* of *loss*, notify us by written notice, but in all events no later than thirty (30) days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable). Such notice shall include but not be limited to a description of the circumstances leading to the *loss*. Written notice shall include but not be limited to full particulars as to dates and persons involved and the date and manner in which the *insured* first became aware of the matters underlying the claim.

For all Insuring Clauses notices under any provision of the policy shall be put in writing and given by courier, certified mail, or email properly addressed to the appropriate party. Any notice under or in connection with this policy that relates to a *claim* or *loss* shall be given to the appropriate branch office, addressed as follows:

Zurich New Zealand
Attention: Financial Lines, Claims Manager.
55-65 Shortland Street
Auckland 1010 New Zealand

Or by email to:

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

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

5.10 Other insurance

If a *claim* is *insured* under any other valid policy(ies), prior or current, then this policy shall cover such *loss*, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such *loss* is in excess of the amount payable from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the *limit of liability* provided in this policy.

If a *claim*, which is covered in whole or in part by this policy, is also covered under any other policy issued by us or any other subsidiary or affiliated company of the Zurich Insurance Group, the *limit of liability* specified in the *schedule* shall be reduced by any amount paid pursuant to such other policy(ies).

5.11 Payments in respect to 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.

5.12 Period of insurance

The insurance is concluded for the period mentioned in the *schedule*. A new written agreement is required for the policy to be renewed on expiry of this period.

5.13 Plurals and Titles

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

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa;
- (c) the male includes the female and neuter; and
- (d) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

5.14 Preservation / presumption of right to indemnity

For the purpose of coverage under Insuring Clause 2, in the event and to the extent that the *insured entity* is legally entitled or obliged to indemnify any *individual insured* for *loss*, but for whatever reason fails or refuses to do so, then we shall pay on behalf of the *individual insured*. In such event, the Insuring Clause 2 *deductible* specified in the *schedule* shall be borne by the *insured entity*.

In the event of the *insured entity* being placed in liquidation (other than voluntary liquidation), no *deductible* amount shall apply.

5.15 Proper 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, *you* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

5.16 Representation

In granting cover under this policy we have relied upon the *submission* which has been completed and signed by the *policyholder*. Such *submission* and all other information provided by the *policyholder* on behalf of itself and all other *insureds* to us form the basis of cover and is incorporated into and constitutes part of this policy.

5.17 Sanctions regulation

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

5.18 Severability and Non-imputation

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

- (a) any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- (b) for the purpose of Exclusion 4.5 'Prior knowledge and Prior discovery', no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

5.19 Subrogation and Recoveries

In the event of payment under this policy for *loss* in respect of a *claim*, we shall be subrogated to the extent of such payment to all of the *insured's* rights of recovery in respect of payment and we shall be entitled to pursue and enforce such rights in the name of the *insured* who shall provide us with all reasonable assistance and co-operation, including the execution of all papers required and shall do everything that may be necessary to secure any rights and including the execution of any documents necessary to enable us effectively to bring suit in the name of the *insured*, whether such acts shall be or become necessary before or after payment by us.

The *insured* shall do nothing to prejudice our rights.

Any amount recovered in respect of any *loss*, whether effected by us or by the *insured*, less the cost of recovery, shall be distributed as follows:

- (a) first, to the *insured* for the amount of such *loss*, otherwise covered, in excess of the *limit of liability*;
- (b) second, to us or the amount of such *loss* paid to or on behalf of the *insured* as covered *loss*;
- (c) third, to the *insured* for their *deductible* amount applicable to such *loss*; and
- (d) fourth, to the *insured* for the amount of such *loss* excluded under this policy.

Recovery by us from reinsurance or indemnity shall not be deemed a recovery hereunder.

In no event however, shall we exercise our rights of subrogation against an *individual insured* under this policy unless such *individual insured* has been convicted of a deliberate criminal, dishonest, fraudulent or malicious act or obtained any profit or advantage to which such *individual insured* was not legally entitled.

5.20 Territorial scope

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

5.21 Valuation and foreign currency

All premiums, limits, *deductible*, *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 shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars in accordance with the Reserve Bank of New Zealand on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of *loss* is due, respectively.

5.22 Valuation of losses

With respect to Insuring Clause 5 the following valuation of *losses* will apply.

5.22.1 Securities

In no event shall we be liable in respect of *securities* for more than the actual cash value thereof at the close of business on the business day on which the *loss* was *discovered*.

5.22.2 Books of Accounts and Records

In the case of loss of or damage to *property* consisting of books of accounts or other records (other than electronic data) used by the *insured* in the conduct of their business, we shall be liable under this policy only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which shall have been furnished by the *insured* in order to reproduce such books and other records.

5.22.3 Electronic Data

In the event that a *loss* covered under this policy results in the destruction, erasure or *theft* of electronic data used by the *insured* while such data is stored within the *insured's* computer systems, we shall be liable under this policy if such data is actually reproduced and cover hereunder shall only apply to the cost of labour for the actual transcription or copying of data, which shall have been furnished by the *insured* in order to reproduce such electronic data.

5.22.4 Damage to Premises

In the case of damage to the premises, we shall not be liable for more than the actual diminution in value of the *property*.

5.22.5 Property

In no event shall we be liable in respect of *property* (not included in the above), for more than the actual cash value thereof at the time of *loss* or for more than the diminution in value of the *property* of such *property* or of replacing same with *property* or material of like quality and value, provided however, the actual cash value of such other *property* held by the *insured* as a pledge, or as collateral for an advance or loan, shall be deemed not to exceed the value of the *property* as determined and recorded by the *insured* when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

5.23 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 *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 *claim* or *loss* confidential, and not to take steps to waive privilege over them.

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



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