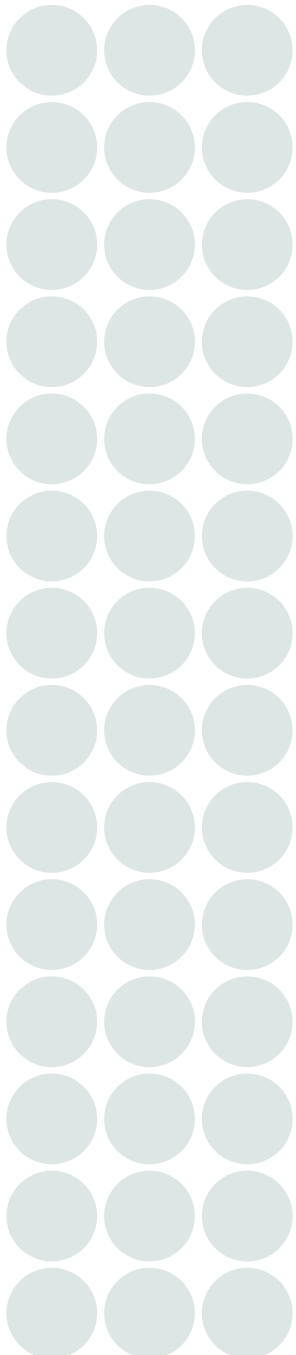


Design and Construction Professional Indemnity

Policy Wording



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Design and Construction Professional Indemnity

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL incorporated in Australia) trading as Zurich New Zealand. In this policy wording, Zurich New Zealand may also be expressed as 'Zurich', 'we', 'us' or 'our'.

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

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

Important Information

This is a "Claims Made and Notified" liability insurance policy. It only provides cover if:

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

How to apply for this insurance

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

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

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

Our contract with you

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

Your policy is based upon:

- the policy wording. This is common to all customers who buy our Design and Construction Professional Indemnity Insurance product. 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.

Duty of Disclosure

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

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

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know;
- that we state 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 Agreement

Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this policy. The policy consists of this policy wording, the *schedule* and any automatic and operative Extensions of Cover and endorsements.

Insuring Clause

We agree to indemnify the *insured* against *loss* incurred as a result of any *claim* for *civil liability* first made against the *insured* and notified to us during the *period of insurance*, based on the *insured's* provision of the *professional services*.

Definitions

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

Act of terrorism

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

Agent

agent means a natural person or company or other entity that has a contract with the *insured* under which the *insured* engages the natural person or company or other entity to act for or on behalf of the *insured* in the provision of *professional services*.

Circumstances

circumstances shall mean any incident, occurrence, fact or matter which may give rise to a *claim*.

Civil liability

civil liability means liability of the *insured* on any civil cause of action for *compensation*, based on its provision of, or failure to provide, the *professional services*. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

Claim

claim shall mean any oral or written demand for *compensation* received by the *insured* during the *period of insurance* including but not limited to a civil proceeding commenced by the service of a statement of claim, writ, complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding.

All *claims* arising directly or indirectly out of or in connection with the same originating cause shall be considered to constitute a single *claim*, for the purposes of the *limit of liability* and the *deductible*.

Claim expenses

claim expenses shall mean all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any *claim*.

Claim expenses shall not include any internal overhead expenses or costs incurred by an *insured* and any salary or remuneration of any *employee*.

All *claim expenses* shall be included in the *limit of liability* and *deductible*, and are not payable in addition thereto.

Compensation

compensation shall mean monetary compensation the *insured* is legally obligated to pay, whether by a judgment or award, or a settlement negotiated with our prior written consent, but does not include *claim expenses*.

Deductible

deductible means the amount stated in the *schedule*, which shall be the responsibility of the *insured*, as applicable, in respect of each *claim* or request for indemnity under the policy.

Director or officer

director or officer shall mean any natural person who was or now is a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) or who becomes a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) during the *period of insurance*, including de jure, de facto and shadow directors but only insofar as such person is providing *professional services*.

Document

document includes all documents whether in soft or hard copy form (excluding stamps, currency coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like) belonging to the *insured* or for which the *insured* is legally responsible, whilst in custody of the *insured*, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the *insured* in the ordinary course of the *professional services* performed by the *insured*.

Employee

employee means any person, other than a *director* or *officer* of the *insured*, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the *insured*, solely in connection with the *professional services* provided by the *insured*. This definition does not include *sub-contractors*.

Inquiry

inquiry means any hearing related to the provision of *professional services* by the *insured* if the findings from such inquiry or hearing could lead to a *claim* being made against the *insured* which may be covered under this policy.

Inquiry costs

inquiry costs means reasonable legal, assessors, adjusters and expert witness costs incurred with our written consent but does not include the *insured's* salaries, wages, travel or accommodation expenses.

Insolvency

insolvency means in relation to any *insured*:

- (a) being under administration or insolvent, each as defined in the Insolvency Act 2006 and as amended or replaced;
- (b) having a controller (as defined in the Insolvency Act 2006 and as amended or replaced) appointed;
- (c) being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, under administration, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- (d) being otherwise unable to pay any debts as and when they fall due;
- (e) having anything with the same or similar effect happen under the laws of any jurisdiction.

Insured

insured means the following:

- (a) the *policyholder* and any *subsidiary* at inception of the policy (or as otherwise agreed by us to be covered under Extension of Cover 18. 'Newly created / acquired subsidiary'); or
- (b) any current or former partner, principal or *employee* of the *policyholder* or any *subsidiary* in (a) above, but only whilst providing *professional services* on behalf of the *policyholder* or such *subsidiary*.

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

Joint venture partner(s)

joint venture partner means any person(s) or entity(ies) with whom the *insured* is engaged in an un-incorporated joint venture.

Limit of liability

limit of liability means the Limits of Liability stated in the *schedule*.

Loss

loss means the following for which the *insured* is legally liable:

- (a) *compensation* and/or claimant's costs pursuant to an award or judgment against the *insured*;
- (b) settlements negotiated by us and consented to by the *insured*;
- (c) settlements negotiated by the *insured* but only with our prior written consent;
- (d) *claim expenses*;
- (e) *inquiry costs*.

But *loss* does not include:

- (i) wages, salary, commission, fees, charges and other form of remuneration or profit to be repaid, lost or foregone by the *insured*, as a result of a *claim*;
- (ii) any component of an award or settlement which represents the cost of performance of the *insured's* original contractual obligations, non-fulfilment or negligent performance of which has given rise to the *claim*.

For the purpose of the *limit of liability*, sub-limits and other applicable terms and conditions of the policy, *loss* also includes all other amounts covered by the policy, including those amounts which are not dependent upon the making of a *claim* against the *insured*.

Novated contract

novated contract means the contract(s) specified by endorsement to the policy.

Period of insurance

period of insurance means the Period of Insurance stated in the *schedule* and any extension thereof which may be agreed between us and the *insured*.

Personal injury

personal injury means bodily injury, mental injury, mental anguish, shock, sickness, disease or death.

Policyholder

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

Pollutants

pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

Property damage

property damage shall mean any damage to or destruction of any tangible property including loss of use thereof and any consequential loss directly resulting there from.

Professional services

professional services means one or more of the following services:

- (a) design, including advice in relation to design, in accordance with all relevant building, construction or engineering codes and standards;
- (b) drafting;
- (c) technical calculation;
- (d) specification;
- (e) project management;
- (f) construction management;
- (g) feasibility studies;
- (h) programming and time flow management;
- (i) quantity surveying;
- (j) surveying;
- (k) training in respect of (a) to (j) above,

provided it is performed by or under the direct supervision of a properly registered engineer, architect, or surveyor, or quantity surveyor (who is a member of the New Zealand Institute of Quantity Surveyors) or any other person (duly qualified by training or education) providing a professional service of a skilful nature, according to an established discipline appropriate for the *professional services* being performed or supervised.

Professional services shall not include:

- (i) performance or supervision (where such supervision would normally be undertaken by a building contractor) of the construction, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property; or
- (ii) environmental protection, workplace health and safety or industrial relations matters which would normally be overseen by a building contractor.

Proportionate liability legislation

proportionate liability legislation means Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Competition and Consumer Act 2010 (Cth), Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252 and any like legislation, all as may be amended from time to time.

Retroactive date

retroactive date means the Retroactive Date specified in the *schedule*.

Schedule

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

Sub-contractors

sub-contractors mean independent consultants or sub-contractors who provide services to the *insured* under a written or oral contract. This definition does not include any *employee*.

Submission

submission means:

- (a) any information and/or statements or materials; and
- (b) any proposal form completed and signed by any *insured* (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.

Subsidiary

subsidiary means any company or other legal entity over which the *policyholder* exercises effective governance or control or in respect of which the *policyholder* directly or indirectly:

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

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the *principal insured* pursuant to Company Law or the applicable New Zealand Accounting Standards.

Technology services

technology services means:

- (a) website design or website programming;
- (b) database design or database management, data warehousing, data application hosting;
- (c) maintenance of computer programs, applications or systems designed or developed by the *insured*;
- (d) design and development of computer software programs, applications or systems;
- (e) creation, maintenance, use, modification, alteration, and input into any digital model or digital representation, including, for example, a Building Information Model (BIM) or other computer assisted design or drafting system or program; and
- (f) electronic data transmissions in conjunction with any of the above.

Territorial limits

territorial limits means the Territorial Limits specified in the *schedule*.

Limit of Liability

Subject to Extension of Cover 23. 'Reinstatement', the *limit of liability* is the total limit of our liability, under or in connection with this policy, in respect of *loss* in connection with any one *claim* and with all *claims* in the *period of insurance*. This is also inclusive of *claim expenses*. The *limit of liability* is also inclusive of any *loss* or costs and expenses for which this policy otherwise provides indemnity to the *insured*. Any applicable sub-limit is part of, and shall not increase, the *limit of liability*.

Extensions of Cover

Cover is automatically provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the extensions of cover 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 feature shall increase our *limit of liability* unless expressly stated otherwise.

1. Claims preparation costs

We will pay all reasonable and necessary out of pocket costs incurred by the *insured* at our request in the preparation of a submission that a *claim* is covered by this policy up to an aggregate amount of \$25,000 (which is included within and not in addition to the *limit of liability*) in respect of all *claims* potentially covered by this policy.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$1,000.

Payments provided under this extension, shall not include any *claim expenses*.

2. Compensatory penalties

Notwithstanding the Definition of *civil liability* and Exclusion 1. in respect of 'Aggravated, Punitive or Exemplary Damages, Fines or Penalties', we cover *claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated *claim expenses* under the policy shall not exceed \$250,000 in the aggregate for all *claims*, which is included within and not in addition to the *limit of liability*.

However, we will not be liable to cover the *insured* for any compensatory civil penalty:

- (a) for which we are legally prohibited at law from indemnifying the *insured*;
- (b) based upon, attributable to or in consequence of any:
 - (i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
 - (ii) gross negligence or recklessness; or
 - (iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

3. Consultants, Subcontractors and Agents

We agree to indemnify the *insured* for loss resulting from any *claim* arising from the conduct of any consultants, *sub-contractors* or *agents* of the *insured* for which the *insured* is legally liable in the provision of the *professional services*. No indemnity is available to the consultants, *sub-contractors* or *agents*.

4. Continuous cover

If the *insured* has neglected, through error or oversight only, in relation to an earlier policy issued by us of the same type as this one, then provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy then, notwithstanding Exclusion 12.(a) 'Prior and pending', we will permit the matter to be reported under this policy and will indemnify the *insured* in respect of any *claim* arising from the matter on the conditions that:

- (a) the indemnity will be subject to the applicable *limit of liability* of the earlier policy under which the matter should have been reported to us;
- (b) we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- (c) the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the *limit of liability*, contained in this current policy; and
- (d) you hereby agree that you will not seek indemnity from us in respect of any such *claim* under both policies issued by Zurich.

5. Court attendance costs

We agree to provide up to \$500 per day for court attendance costs incurred by any natural person who is an *insured*, if they are legally compelled to attend a civil proceeding as a witness in a *claim* covered by this policy. Our total aggregate liability during any one *period of insurance* for all court attendance shall not exceed \$50,000, and shall be part of and not in addition to the *limit of liability* as shown in the policy *schedule*.

6. Deemed Employees

The Definition of *insured* is extended to include a contractor or consultant who:

- (a) has an oral or written contract with the *insured*, (including any *subsidiary* of any *insured*), to perform *professional services* for and on behalf of the *insured*; and
- (b) is a deemed worker under the New Zealand Accident Compensation Act 2001 in which the contractor or consultant is performing the *professional services*.

7. Dishonesty

Notwithstanding Exclusion 5. in respect of 'Fraud and Dishonesty', we agree to indemnify the *insured* for loss resulting from a *claim* alleging conduct of the *insured* or any *agent* in the provision of *professional services* that falls or may fall within that exclusion. Provided that:

- (a) no indemnity is available to the dishonest employee themselves, or at all where any *insured* has knowingly engaged in or condoned such conduct;
- (b) for the purpose of this clause, employee shall mean a person or persons in the direct service to you under a contract of service,
- (c) no indemnity is available in respect of a *claim* arising from or in any way connected with the loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

8. Estates and Legal representatives

We agree to indemnify the estate, heirs, legal representatives or assignees of a natural person who is an *insured* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insured* would be entitled to be indemnified in respect of a *claim* made against them. This clause only provides an indemnity in accordance with the Insuring Clause in respect of *claims* solely based on the conduct of the relevant *insured*.

It does not respond where the conduct is that of an *insured's* estate, heir, legal representative or assignee.

9. Extended notification period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then the *insured* has until such time that the *insured* effects another professional indemnity insurance policy either with us or any other insurer or a period of 60 days commencing on the day immediately following expiry of this policy, whichever is the lesser period, during which to notify us of any *claim* first made against the *insured* in writing within such 60 day or lesser period (as the case may be). Provided always that it is understood and agreed that:

- (a) we will treat that *claim* as if it had been made against the *insured* and notified to us during the immediately preceding *period of insurance*; and
- (b) coverage afforded thereunder does not reinstate or increase the *limit of liability* or the aggregate *limit of liability* or extend the *period of insurance*; and
- (c) coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the *insured* before the end of the *period of insurance* or the cancellation date of this policy where this policy has been cancelled and not before the *retroactive date*.

10. Inquiries

We will pay on behalf of the *insured* the *inquiry costs* which the *insured* incurs in preparing for and attending an *inquiry* provided that a notice requiring the *insured* to attend the *inquiry* is first served upon the *insured* during the *period of insurance* and reported to us during the *period of insurance*.

Our total aggregate liability for *inquiry costs* for all *inquiries* for all *insured's* shall not exceed \$250,000, which is included within and not in addition to the *limit of liability*.

11. Intellectual property including Breach of confidentiality

We agree to indemnify the *insured* for *loss* resulting from any *civil liability claim* resulting from any unintentional infringement of copyright, trade marks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by the *insured*.

The coverage provided by this extension is always subject to Exclusion 18. 'USA / Canada exposure' even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this policy.

12. Joint venture

We agree to indemnify the *insured* for *loss* resulting from a *claim* arising from activities in which the *insured* is engaged in the provision of the *professional services*, as a partner in an un-incorporated joint venture. No indemnity shall be available hereunder to the *joint venture partner(s)*.

13. Libel, slander and defamation

We agree to indemnify the *insured* for *loss* resulting from a *claim* for unintentional libel, unintentional slander or other unintentional defamation by an *insured* in the provision of the *professional services*.

14. Limitation of liability contracts

Notwithstanding Claims Condition 10. 'Subrogation' we recognise that the *insured* will enter into contracts with other parties relating to the performance of the *professional services* which may waive or otherwise *limit the liability* of such parties. We agree that such contracts will not prejudice the *insured's* right to indemnity under the policy. However the cover provided by this extension shall not apply to contracts (whether written or otherwise) entered into as a result of a dispute which in any way involves the *insured*.

15. Loss of documents

Notwithstanding Exclusion 11. in respect of 'Personal injury / property damage', we agree to indemnify the *insured*:

- (a) any *claim* for *civil liability* made against the *insured* for loss, damage or destruction of any *documents* and/or computer records belonging to the *insured* or for which the *insured* is legally responsible, where the loss, damage or destruction occurs in the provision of the *professional services* after the *retroactive date*; and

- (b) for all reasonable costs and expenses incurred by the *insured* in replacing and/or restoring such *documents*.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within the *period of insurance* and rectification of which is undertaken as soon as practicable by the *insured* with our prior written consent, such consent not to be unreasonably withheld;
- (ii) we shall not be liable for any *claim* in 15.(a) or costs and expenses in 15.(b) directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused;
- (iii) we shall not be liable for any *claim* in 15.(a) or costs and expenses in 15.(b) directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The *limit of liability* for this feature applies to all *claims* covered under 15. (a) above, inclusive of *claim expenses*, and costs and expenses in 15. (b) above, in the aggregate. Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$5,000 or the *deductible* shown in the *schedule* whichever is the lesser.

16. Merger / takeover / sale / winding-up of insured – run-off coverage

If during the *period of insurance* the *insured* is subject to a merger, takeover, sale or winding-up, then coverage in accordance with the Insuring Clause shall continue through to the expiry of this policy, but shall apply only for *civil liability claims* resulting from the *professional services* provided or allegedly provided prior to the effective date of the merger, takeover, sale or winding-up.

Upon application by the *insured* and subject to written agreement by us prior to expiry of the *period of insurance*, and subject as well to payment of any additional premium required by us (to be paid in full immediately upon expiry of this *period of insurance*) cover provided in accordance with this feature may be extended for an additional *period of insurance* of up to 84 months as may be determined by agreement between the *insured* and Zurich.

17. Mitigation of loss

We agree to pay, the direct costs and expenses necessarily and reasonably incurred by the *insured*, in taking action necessary to rectify, or mitigate the effects of any act, error or omission of the *insured* in connection with the provision of *professional services*, that otherwise would be the subject of a covered *claim* for *civil liability* under this policy, provided always that the *insured*:

- (a) first discovers such act error or omission during the *period of insurance* and notifies us of such act error or omission during the *period of insurance*.
- (b) notifies us during the *period of insurance* of their intention to take such action and obtains our prior written consent (which shall not be unreasonably withheld) before incurring any direct costs or expenses.

Payments provided under this extension, shall not include any *claim expenses*. Any costs and expenses paid under this Extension of Cover shall be part of and not in addition to the *limit of liability* as shown in the policy *schedule*.

18. Newly created / acquired subsidiary

We agree to indemnify the *insured* in accordance with the Insuring Clause any new *subsidiary* created or acquired by the *policyholder* during the *period of insurance*. The following terms apply to this extension:

- (a) cover only applies to conduct of the new *subsidiary* occurring within a period of 45 days from the date of the creation or acquisition of the *subsidiary*;
- (b) cover only applies to such *claims* arising from conduct which occurred or is alleged to have occurred subsequent to the date of acquisition or creation of the *subsidiary*;
- (c) during the time in 18.(a) above, the *policyholder* shall supply such additional information relating to the new *subsidiary* as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the policy.

19. Principal's indemnity

To the extent that it is contractually required of the *insured*, we shall also indemnify any Principal in regards to *professional services* undertaken by or on behalf of the *insured* for the *claim* against a Principal, provided that:

- (a) the *claim* is such that if made upon the *insured*, the *insured* would be entitled to indemnity under the policy;
- (b) we shall have the conduct and control of all *claims* for which the Principal seeks indemnity hereunder or from the *insured*;
- (c) this policy shall not extend to provide cover in respect of the Principal's own breach of professional duty or other events not covered by this *policy* and the terms and conditions of this policy otherwise apply.

For the purpose of this clause, the Principal shall be deemed to be an *insured*. Nothing in this clause shall preclude the *insured* (not being the Principal) from the right to indemnity under this policy should the Principal instigate proceedings against such other *insured* for a *claim* which results from the provision of *professional services*, in the Principal's own right.

20. Privacy

We agree to indemnify the *insured* for *loss* resulting from a *claim* for *civil liability* which is made during the *period of insurance*, which alleges unlawful interference with or breach of privacy by the *insured* in the provision of the *professional services*.

21. Public relations expenses

Where the *insured* retains the services of a public relations consultant for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of a *claim* covered by this policy, we agree to pay any reasonable fees, costs and expenses of a duly qualified public relations consultant on the basis that:

- (a) the *insured* notifies us within 30 days of the first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the *circumstances* surrounding the event; and
- (b) we have given prior written consent to retain the services of such public relations consultants; and

- (c) our total aggregate liability during any one *period of insurance* for all public relations expenses shall not exceed \$50,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*.

22. Reduction of deductible

Notwithstanding the provisions of General Condition 6, 'Deductible', where the *deductible* for this policy is \$50,000 or less, we agree to reduce it by 50% in respect of any *claim* where such *claim* is settled or disposed of in accordance with the *insured's* obligations under this policy without the involvement of any lawyer for any party, including but not limited to the *insured*, any third party or Zurich.

23. Reinstatement

In the event that the *limit of liability* under this policy has been entirely exhausted during the *period of insurance*, by *claims* or *loss* indemnified or for which we have agreed to indemnify, the *limit of liability* will be reinstated in the same amount, once only, conditional upon the following:

- (a) that the reinstated *limit of liability* shall only apply to *claims* or *loss* which do not arise out of and do not have any connection with the source or originating cause of any of the *claims* or *loss* already paid or payable out of the original *limit of liability*;
- (b) that all other terms, conditions, exclusions and limitations of the policy shall continue to apply, in the same manner, in respect of *claims* and *loss* to which the reinstated *limit of liability* applies;
- (c) that the *insured* has satisfied us that they have no other valid and collectible excess or other insurance to call upon, after exhaustion of the original *limit of liability*, or that all such insurance (including any automatic reinstatement entitlement to which those policies may be subject) has also been exhausted by *claims* or *losses* indemnified or for which the insurers in question have agreed to indemnify;
- (d) that the request for reinstatement must be made by the *policyholder*, and all requirements relating to it be satisfied by it, before the expiry of the *period of insurance*; and
- (e) there shall be no reinstatement at all of any sub-*limit of liability*.

24. Technology services

We agree to indemnify the *insured* for any *claim* or *loss* resulting from *technology services*, where they are performed for the purpose of providing the *professional services* as detailed in the *schedule*.

Our total aggregate liability during any one *period of insurance* for all *technology services* shall not exceed \$250,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*

Optional Extensions of Cover

Cover is provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the features described below. Each feature is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it and shall apply only if they are specifically noted as 'Included' in the policy *schedule*.

25. Contractual liability

Notwithstanding Exclusion 2 'Contractual liability and Commercial risks' sub-section (a), we will indemnify the *insured* against *civil liability* arising from a *claim* under an indemnity and or hold harmless provision of a contract, to the extent that such *civil liability* arises from the *insured's* performance of *professional services*.

26. Novated contracts

With respect to Exclusion 2. 'Contractual liability and Commercial risks', sub-section (a) we will not apply this exclusion to a liability which the *insured* has assumed only by reason of the novation of a *novated contract* in circumstances where:

- (a) the *insured* purchases or acquires another business or contract;
- (b) the *insured* assumes responsibility for *professional services* previously undertaken by another party; or
- (c) the *insured's* contract to provide *professional services* is novated to another party, provided that any *claim* for *civil liability* arises out of *professional services* conducted by the *insured* prior to the novation of the contract to a another party.

Cover provided under this extension shall not include:

- (i) liabilities in the *novated contract* that were not otherwise covered by this policy prior to such contract being novated; or
- (ii) any additional liabilities the *insured* has assumed by virtue of the novation of a *novated contract* to the *insured*.

27. Proportionate liability

Notwithstanding Exclusion 2 'Contractual liability and Commercial risks' sub-section (a), we will not apply this exclusion to a liability that the *insured* has assumed under contract by reason of it having contracted out of the operation of the *proportionate liability legislation*.

Exclusions

We will not pay anything in respect of:

1. Aggravated, Punitive or Exemplary Damages, Fines or Penalties

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

- (a) fines, taxes, penalties, exemplary, punitive, or aggravated damages; or
- (b) the return, restitution, or offset of fees, expenses or costs paid to an *insured*; or
- (c) contractual penalties; or
- (d) any other damages deemed uninsurable in law.

2. Contractual liability and Commercial risks

any *claim* arising from or in connection with:

- (a) any contractual liability or assumed liability, unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability;
- (b) any liability assumed by an *insured* under any guarantee or warranty unless the *insured* would in any event be legally liable in the absence of such guarantee or warranty;
- (c) any trading debt incurred by the *insured*;
- (d) the failure to provide, effect or maintain any bond, surety or insurance; or
- (e) the *insolvency*, receivership, administration, bankruptcy or any party involved in any project.

3. Directors and officers

any *claim* directly or indirectly arising from or in connection with any *insured* acting in the capacity of a *director* or *officer* of a company, association or other legal entity.

4. Employer's liability

- (a) any *claim* for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any actual or deemed *employee* of the *insured* or for the destruction or loss or damage to any tangible property belonging to an actual or deemed *employee*, including loss of use thereof, arising in the course of their employment;
- (b) any *claim* arising out of any obligation for which the *insured* or any carrier as its Insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.

5. Fraud and Dishonesty

- (a) any actual dishonest, fraudulent, criminal, wilful or malicious conduct of any *insured*;
- (b) any *civil liability* incurred by the *insured* which arises from conduct of the *insured* or their *agent* which is established to have been committed with a reckless disregard for the consequences thereof; or
- (c) any wilful breach of any statute, contract or duty by any *insured* or their *agent*.

6. Insolvency

any *claim* made against the *insured*, where all or part of such *claim* is directly or indirectly based upon or attributable to the *insolvency* of the *insured* or the suppliers and/or *sub-contractors* of the *insured*.

7. Licensing inquires

any prosecution, *inquiry*, hearing, commission or other investigation in relation to the *insured* failing to be properly licensed, registered or accredited to provide *professional services* as required by any Acts, rules, regulations or industry codes of practice.

8. Manufacturing / Efficacy / Faulty workmanship

any *claim*, *loss* or other amount comprising, directly or indirectly arising out of or in connection with any defect in or lack of suitability of any product or good unless it arises directly out of the provision of *professional services*.

9. Money and Negotiable instruments

any *claim* directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

10. Owners and Occupiers liability

any *claim* directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by the *insured*.

11. Personal injury / Property damage

- (a) any liability for *personal injury* suffered or incurred by any entity or person; and/or
- (b) any loss of property or *property damage*; other than as the direct result of *professional services* having been or being performed, undertaken or provided by or on behalf of the *insured*.

12. Prior and Pending

any *claim* made against or in any way intimated to the *insured* prior to the commencement of the *period of insurance* or directly or indirectly arising from or attributable to:

- (a) any facts or *circumstances* of which the *insured* was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against the *insured* might arise;
- (b) any facts or *circumstances* reported to an insurer under any insurance policy entered into before the commencement of the *period of insurance*; or
- (c) any facts disclosed to any insurer in any *submission* for insurance prior to the commencement of the *period of insurance*.

13. Project specific insurance

any *claim* arising out of any project that is *insured* under a project specific insurance policy, provided that this exclusion shall not apply where the *insured's* liability is in excess of the limits of liability available under such project specific insurance and which has been specifically included for excess coverage by an endorsement to this policy.

14. Radioactivity / pollution / asbestos

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

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

- (b) seepage, pollution or contamination of any *pollutant* by whatever nature and however occurring;
- (c) mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there;
- (d) asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising;
- (e) silicon or silica, or any material, substance or property derived from or containing or allegedly containing silicon or silica, in whatever form or quantity and however arising.

15. Related entities

any *claim* made against the *insured* by or on behalf of:

- (a) any *insured* (in whatever capacity) against another *insured* unless the *claim* seeks indemnity or contribution from the *insured* in respect of a *claim* brought or maintained by persons or entities that are not an *insured*;
- (b) any person who at the time of the conduct giving rise to the *claim*, is a family member, unless such person is acting without the co-operation or solicitation of any *insured*;
- (d) any parent or controlling entity, successor or assign of any *insured*;
- (e) any other person or entity, including but not limited to a trustee:
 - (i) who or which is controlled or operated by any *insured*; or
 - (ii) where any *insured* has a direct or indirect financial interest, including but not limited to where any *insured* is a beneficiary of a trust.

16. Retroactive date

any *claim* directly or indirectly arising from or in connection with any conduct, act, error or omission which has taken place or is alleged to have taken place prior to the *retroactive date*.

17. Territorial limits

any *claim* brought outside of the *territorial limits* of this policy.

18. USA / Canada exposure

- (a) any *claim* directly or indirectly arising out of or in connection with conduct of the *insured* anywhere within the territorial limits of the United States of America or the Dominion of Canada, their territories or protectorates;
- (b) any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada, their territories and protectorates;
- (c) the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada or their territories and protectorates;
- (d) any *claim* which is pursued by way of arbitration, mediation, conciliation, expert determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of the United States of America, the Dominion of Canada, their Territories and Protectorates, or for the recovery of any award or costs issued or incurred in connection with any such procedure.

19. War, Act of terrorism

any *claim* caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- (a) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

20. Watercraft, Aircraft and Motor vehicles

any *claim* directly or indirectly arising from or in connection with the ownership, maintenance, operation, possession, use, loading or unloading by our on behalf of the *insured* of any watercraft, aircraft, motor vehicle or trailer.

Claims Conditions

The following Claims Conditions apply to your policy.

1. Advance payment of claim expenses

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

- (a) indemnity under this policy is confirmed in writing by us; or
- (b) at our absolute discretion, without admitting indemnity, we agree to advance such *claim expenses*.

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

2. Allocation

If both *loss* covered by this policy and *loss* not covered by this policy are incurred, either because a *claim* includes both covered and uncovered matters or because a *claim* is made against both *insured* and others who are not insured under this policy (including those persons or entities referred to in the *schedule* as the *insured*), the *insured* and Zurich shall use their best efforts to agree upon a fair and proper allocation between covered *loss* and uncovered *loss* having regard to the relative legal and financial exposures attributable to the covered and uncovered parties and/or matters. We are only liable under this policy for amounts attributable to covered matters and parties, and our liability for *loss*, including *claim expenses*, otherwise payable by us shall be reduced to reflect such fair and proper allocation.

If we and the *insured* agree on an allocation of *claim expenses*, we shall, subject to Claims Condition 1. 'Advance payment of claim expenses', advance *claim expenses* in accordance with that Condition. If the parties cannot agree on such allocation, we shall, subject to Claims Condition 1. 'Advance payment of claim expenses', advance *claim expenses* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

If requested by the *insured*, we shall submit any dispute on allocation to a Senior Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the Senior Counsel shall determine the allocation according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in this Claims Condition 2. The costs of Senior Counsel shall constitute *claim expenses* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

Any such determined allocation of *claim expenses* on account of a *claim* shall be applied retroactively to all *claim expenses* on account of such *claim*, notwithstanding any prior advancement on a different basis. Any advancement of *claim expenses* shall be repaid to us by the *insured* severally according to their respective interests, if and to the extent that we determine that such amounts paid by us are not insured by this policy.

Any allocation or advancement of *claim expenses* in connection with a *claim* shall not pre-determine the allocation of other *loss* on account of such *claim*. In any arbitration, suit or other proceedings between us and the *insured* no presumption shall exist as to a fair and proper allocation, but will be governed by the intention set out in this clause.

3. Audit and Inspection

We may audit or inspect and have copies of any of the *insured's* books, records, information and operations at any time upon reasonable notice to the *insured* as far as such books, records, information and operations relate to any notification under this policy.

4. Defence and Settlement

We shall be entitled at our option (but not obliged) at any time to take over and conduct in the name of the *insured* the defence or settlement of any *claim* against the *insured*, and to claim indemnity or contribution at any time, in the name of the *insured*, from any party against whom the *insured* may have such rights.

The *insured* shall, at their own cost, upon our request give all such information, co-operation and assistance to us as we may reasonably require, to enable us to investigate and to defend a *claim* and to make any cross-claim for contribution, indemnity or damages and/or to enable us to determine our liability under this policy.

Where we do not elect to assume the conduct of the defence and/or settlement of a *claim*:

- (a) we shall retain the right to actively participate in the defence and settlement of the *claim* in respect of which indemnity is sought under this policy; and
- (b) the *insured* shall assert all appropriate defences and cross-claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the *claim*.

5. Settlement disputes

We shall not require the *insured* to contest any *claim* unless a Senior Counsel (to be mutually agreed upon between us and the *insured*) advises that such *claim* should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential *loss* and *claim expenses*) and the prospects of the *insured* successfully defending the *claim*. The cost of such Senior Counsel's opinion shall be deemed to be part of *claim expenses*.

In the event that we recommend settlement in respect of a *claim* and the *insured* does not agree that such *claim* should be settled, the *insured* may elect to contest such *claim* provided always that our liability shall not exceed the amount for which the *claim* could have been settled plus *claim expenses* incurred with our prior written consent up to the date of such election. The *insured* shall not unreasonably withhold consent to any settlement recommended by us.

6. Multiple Insured, Claims and Claimants

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim* for the purposes of the *limit of liability* and the *deductible*.

7. Other insurance

If *loss*, *claim expenses* or any other amounts insured under this policy are also potentially insured under any other insurance policy or policies, then the *insured* must advise us at the time of making a claim under this policy, and provide us with details of the other insurance.

This policy does not cover any *claim* or *loss* in respect of which the *insured* is entitled to indemnity under any other insurance.

8. Payments in respect to Goods and Services Tax

All sums insured in this policy (except for the excess) 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 excess which is GST inclusive.

9. Reporting and Notice

The *insured* as a condition precedent to the right to be indemnified under this policy shall provide written notice to us during the *period of insurance* of any *claim* made against an *insured*.

Written notice shall include but not be limited to full particulars as to dates and persons involved, the date and manner in which the *insured* first became aware of the matters underlying the *claim*.

All notices under any provision of the policy shall be put in writing and given by courier, certified mail, email or fax 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 Zurich branch office, addressed as follows:

Zurich New Zealand
Attention: Financial Lines, Claims Manager
General Insurance

All other notices shall be given to the Financial Lines Underwriter at the appropriate Zurich branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

10. Subrogation

If we grant indemnity under this policy in respect of any *claim* or *loss* then we shall be subrogated to all the *insured's* rights of recovery in respect of such *claim* or *loss* regardless of whether or not any payment has been made or the *insured* has been compensated in full for their *loss*. The *insured* will give all such assistance in the exercise of rights of recovery as we may reasonably require.

The *insured* must refrain from doing anything that might prejudice our actual or potential rights of recovery against any party. Any amounts recovered by us, shall be allocated in the following order recovery costs, uninsured *loss*, *limit of liability* and *deductible*.

We agree not to exercise any such right of subrogation against any of the *insured's* *directors*, *officers* or *employees* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the *director*, *officer* or *employee*.

General Conditions

The following General Conditions apply to your policy.

1. Assignment

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

2. Authorisation

The *policyholder* is authorised to act on behalf of all *insured* persons and entities.

3. 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 *insured* 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 *insured*;
- (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*.

4. Change of risk

Every change materially affecting the facts, circumstances, degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of the *insured* or any of their officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate.

5. Changes to the policy

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

6. Deductible

Our obligation to pay *loss* (including *compensation* and *claim expenses*) in connection with any *claim*, or other amount under this policy, shall only be in excess of the *deductible* as stated in the *schedule* or as otherwise stated in this policy.

The *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss* and *claim expenses*. The *deductible* will be the first amount borne by the *insured* and shall remain uninsured.

7. Late arising extensions

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

8. Notice

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

9. Plurals and Titles

The *submission*, this policy, the *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.

10. 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.

11. 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 purposes of the exclusions (other than Exclusion 12. 'Prior or Pending'), no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

12. Valuation and Foreign currency

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an 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 as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

13. 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 *claim*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect.

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