

Directors and Officers Liability Insurance

Financial Institutions – 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 *continuity date* stipulated in the policy *schedule*.

Duty of Disclosure

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

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

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

Non-disclosure or Misrepresentation

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

Our contract with you

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

The policy is made up of:

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

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

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

Zurich Directors and Officers Liability Insurance – Financial Institutions Policy

Subject to payment of the *premium* set out in the schedule, we agree with the *insured* to provide insurance in accordance with the terms, conditions and exclusions of this policy.

1. Insuring clauses

1.1 Directors and Officers liability cover

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

1.2 Company reimbursement cover

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

1.3 Company securities claims cover

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

1.4 Outside entity executive excess cover

We will pay to or on behalf of:

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

1.4.2 the *company* any *indemnified financial loss*,

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

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

1.5 Investigation costs cover

We will pay to or on behalf of:

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

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

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

2. Extensions

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

2.1 Additional limits for directors or officers and outside entity executives

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

This extension applies only in excess of and only after:

- 2.1.1 the total exhaustion of the *limit of liability* of this policy; and
- 2.1.2 the total exhaustion of the limit of liability of all other applicable Directors and Officers or Management Liability or indemnity Insurance policies written as specific excess policies over this policy; and
- 2.1.3 any other policy entered into by or effected on behalf of the *director or officer* or *outside entity executive* or under which the *director or officer* or *outside entity executive* is a beneficiary; and
- 2.1.4 all other indemnification for *financial loss* available to the *director or officer* or *outside entity executive*.

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

2.2 Company reputation cover

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

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

2.3 Continuous cover

Notwithstanding exclusion 4.5 'Prior and pending', and subject to condition 5.13 'Non-disclosure and misrepresentation waiver', we will pay *financial loss* which arises from any *claim* or *investigations* first made against an *insured* during the *period of insurance* arising from a *prior known fact*, provided always that:

Provided that:

- 2.3.1 the *insured* has maintained without interruption, Directors and Officers Liability insurance from the *continuity date* to the present date; and
- 2.3.2 neither the *claim* nor the *prior known fact* has been notified to us earlier or to any other insurer under any policy at any time; and
- 2.3.3 cover under this extension will be pursuant to the terms, conditions, and exclusions of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no greater or wider cover in respect of the *claim* than the provisions of this policy.

2.4 Emergency costs and expenses

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

We will not rely on either exclusion 4.2 'Conduct' or exclusion 4.5 'Prior and pending' to deny indemnity or to refuse to advance such costs and expenses until the matter in question has been finally established by a court judgment or other final non-appealable adjudication.

If our prior written consent to such costs and expenses cannot reasonably be obtained by the *insured*, the *insured* may incur them without our prior written consent for a period of up to thirty (30) days from the date on which they were first incurred.

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

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

2.5 Environmental mismanagement and pollution

We will pay to or on behalf of:

- 2.5.1 any *insured person* any *non-indemnified financial loss* which arises from an *environmental mismanagement claim*;
- 2.5.2 any *company* for *indemnified financial loss* which arises from an *environmental mismanagement claim*; and
- 2.5.3 the *company* for *financial loss* which arises from a *securities claim* resulting from an *environmental event* pursuant to Insuring Clause 1.3.

2.6 Extended reporting period (ERP)

2.6.1 Non-renewal

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

- (a) of ninety (90) days at no additional premium, automatically; or
- (b) of twelve (12) months at the additional premium required by us.

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

2.6.2 Change in control

In the event of a *change in control* as defined in definition 3.3.1, the *policyholder* may purchase an *extended reporting period* of up to eighty four (84) months to commence immediately following the expiry date of the *period of insurance*. The *policyholder* must make a written request for such *extended reporting period* no later than thirty (30) days after the *change in control* and pay the additional premium required (less any unearned premium for this policy). This extension will not apply in the event of *financial impairment* of the *policyholder* or the appointment of an *external administrator*.

2.6.3 Insured person ERP election

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

- (a) any cover for the *company*;
- (b) any cover for any other *insured*; or
- (c) *indemnified financial loss*.

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

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

2.6.4 Unlimited ERP for retired/resigned directors and officers

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

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

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

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

2.7 Indemnity costs for shareholder derivative claims

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

2.8 Insured persons' protection cover

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

- 2.8.1 *asset and liberty protection costs* and *prosecution costs*;
- 2.8.2 *extradition costs* which arise from any *extradition claim* made against such *insured person*;
- 2.8.3 *personal expenses*; and
- 2.8.4 *personal reputation protection expenses* arising from a *personal reputation crisis*.

2.9 Joint venture

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

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

2.10 Late arising extensions

If during the *period of insurance* we:

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

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

This extension shall not apply:

- (i) in the event of *financial impairment* at the time such endorsement becomes available;
- (ii) during any *extended reporting period* under extension 2.6; or
- (iii) in the event of a *change in control* before or at the time such endorsement becomes available.

2.11 Runoff cover for outside entity executives

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

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

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

2.11.3 otherwise covered under this policy.

2.12 Runoff cover for past subsidiaries

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

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

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

2.12.3 otherwise covered under this policy.

2.13 Tax liability

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

2.14 Workplace health and safety

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

3. Definitions

For the purposes of this policy:

3.1 Asset and liberty protection costs

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

3.2 Bodily injury

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

3.3 Change in control

change in control means an event or events occurring, with the result that:

3.3.1 any person, entity or group:

(a) acquires more than 50% of the *policyholder's* share capital;

(b) acquires the majority of the voting rights in the *policyholder*;

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

- (d) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
- (e) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or

3.3.2 an *external administrator* is appointed for the *policyholder* as a result of *financial impairment*.

3.4 Civil or bail bond expenses

civil or bail bond expenses mean a fee or premium (and only those that are available at reasonable commercial rates) necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

3.5 Claim

claim means:

- 3.5.1 (a) a written demand for monetary damages or non-monetary or injunctive relief;
- (b) a civil, administrative, regulatory or arbitration/mediation proceeding or suit or alternative dispute resolution proceeding, including any counter-claim commenced by the service of a statement of claim, summons or similar pleading, or receipt of filing of a notice of charges;
- (c) a criminal proceeding alleging a *wrongful act*, including any counter claim commenced by the service of the return of an indictment, information or similar document,
issued by a *third party* against an *insured person* for a *wrongful act*.

claim also means:

- 3.5.2 a written request to extend the operation of or waive any statute of limitations or contractual time-bar in respect of a *claim*;
- 3.5.3 an *extradition claim* solely with respect to Extension 2.8 'Insured persons cover' clause 2.8.2;
- 3.5.4 an *environmental mismanagement claim* solely with respect to Extension 2.5 'Environmental mismanagement and pollution' and an *employment claim*;
- 3.5.5 a *company crisis* or *personal reputation crisis*;
- 3.5.6 a *securities claim* with respect to Insuring Clause 1.3.

3.6 Clean up costs

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

3.7 Company

company means:

- 3.7.1 the *policyholder*;
- 3.7.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy); and
- 3.7.3 any charitable foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*, other than any pension or superannuation fund, trust or scheme.

Company does not mean an *investment fund* or an *investment entity*.

3.8 Company crisis

company crisis means:

- 3.8.1 a *claim* made against an *insured* during the *period of insurance* under this policy that we reasonably believe will exceed NZD \$5,000,000 in damages over and above the *deductible* of the relevant Insuring Clause to which the *claim* relates; or
- 3.8.2 the unforeseen death during the *period of insurance* of a key individual that we deem will have a significant adverse impact on the *company's* financial performance; or
- 3.8.3 a reduction of more than 30% in the *company's* market capitalisation during the *period of insurance* that can reasonably be attributed to one or more of the following unforeseen events:
 - (a) an extortion threat;
 - (b) an *environmental event*;
 - (c) an *extradition*; or
 - (d) a product recall.

A *company crisis* shall end once the external public relations or crisis management consultant advises the *company* that such *company crisis* no longer exists or six (6) months after the event in 3.8.1, 3.8.2 or 3.8.3 (whichever is applicable), whichever occurs first.

3.9 Company reputation protection expenses

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

3.10 Continuity date

continuity date means:

- 3.10.1 for *insured persons*, the Continuity date for Insured persons specified in the *schedule*; and
- 3.10.2 for the *company*, the Continuity date for the Company specified in the *schedule*.

3.11 Corporate manslaughter proceeding

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

3.12 Deductible

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

3.13 Defence costs

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

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

Defence costs do not include *investigation costs*.

3.14 Deprivation of asset and liberty proceeding

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

- 3.14.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
- 3.14.2 a charge over real property or personal assets of such *insured person*;
- 3.14.3 a temporary or permanent prohibition on or disqualification of such *insured person* from holding the office of or performing the function of a director or officer (or equivalent) of any entity or from managing a company;
- 3.14.4 the restriction of such *insured person's* liberty to a specified domestic residence or official detention;
- 3.14.5 a prohibition on such *insured person* departing from a country; or
- 3.14.6 the deportation of such *insured person* following revocation of otherwise proper, current and valid immigration status for any reason other than such *insured person's* conviction of a crime.

3.15 Director or officer

director or officer means:

- 3.15.1 any natural person who is a past, present or future director, officer, management committee member, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in a *foreign jurisdiction*;
- 3.15.2 any natural person who is a past, present or future *shadow director* of the *company*;
- 3.15.3 any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *company*;
- 3.15.4 any *director or officer* defined in 3.15.1 to 3.15.3 above, who is, was or becomes a member of the *company's* internal audit committee, or any other internal committee of the *company*;
- 3.15.5 any *employee* of the *company* who is a past, present or future corporate general counsel or risk manager (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *company* defined in 3.15.1 to 3.15.4 above; and
- 3.15.6 any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the *company*.

3.16 Employee

employee means a natural person while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service. The definition of *employee* shall not include independent contractors or agents.

3.17 Employment claim

employment claim means:

- 3.17.1 a *claim* as defined in definition 3.5.1 and 3.5.2, based on any actual or alleged act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of the *company* or employee of an *outside entity*; or
- 3.17.2 a proceeding, investigation or charge brought by or before the Human Rights Commission (or similar body in any *foreign jurisdiction*).

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

3.18 Environmental event

environmental event means:

- 3.18.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or *greenhouse gases* into or on real or personal property, water or the atmosphere; or
- 3.18.2 any direction or request that the *company* or *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or *greenhouse gases*, or any voluntary decision to do so, whether or not such *greenhouse gases* are *pollutants*.

3.19 Environmental mismanagement claim

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

- 3.19.1 is a *securities claim*;
- 3.19.2 is an *employment claim* against an *insured person*, including any such *claim* for retaliatory treatment;
- 3.19.3 is against an *insured person* for *wrongful acts* in connection with an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes; or
- 3.19.4 results in *financial loss* incurred by an *insured person*.

3.20 Expenses

expenses means:

- 3.20.1 *investigation costs*;
- 3.20.2 *extradition costs*;
- 3.20.3 *prosecution costs*;
- 3.20.4 *civil or bail bond expenses*;
- 3.20.5 *personal expenses*; and
- 3.20.6 *personal reputation protection expenses*.

3.21 Extended reporting period

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

- 3.21.1 *claim* which alleges a *wrongful act*; or
- 3.21.2 *pre-claim event* or *investigation* in respect of *wrongful acts* or conduct, occurring prior to the expiry of the *period of insurance* or *change in control*.

Any *extended reporting period* shall:

- (a) commence immediately from expiry of the *period of insurance* or *change in control*, as applicable; and
- (b) terminate immediately on the effective date of:
 - (i) the renewal of this policy by us; or
 - (ii) the placement of any directors and officers or management liability contract of insurance issued by any other insurer which effectively replaces or renews the coverage provided by this policy, either in whole or in part.

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

3.22 Extradition

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

3.23 Extradition claim

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

3.24 Extradition costs

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

3.24.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting or defending any *extradition claim*;
- (b) appealing any order or other grant of *extradition* of that *insured person*; or
- (c) seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;

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

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

3.25 External administrator

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

3.26 Financial impairment

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

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

3.26.2 the appointment by or on behalf of the *company* of administrators; or

3.26.3 the *company* being placed into receivership or liquidation.

3.27 Financial loss

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

- 3.27.1 damages and judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees and/or their reasonable costs, charges and expenses arising from the *claim* awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) which any *insured* becomes legally liable to pay;
- 3.27.2 sums payable for any settlement to which we have consented;
- 3.27.3 *defence costs*;
- 3.27.4 *pre-claim costs*;
- 3.27.5 punitive, exemplary, aggravated and multiple damages awarded against an *insured person* where permissible and insurable under applicable law;
- 3.27.6 *civil or bail bond expenses*;
- 3.27.7 *investigation costs* (under Insuring Clauses 1.5);
- 3.27.8 *asset and liberty protection costs*;
- 3.27.9 *extradition costs*;
- 3.27.10 fines and pecuniary penalties (including fines for corrupt practices) awarded against an *insured person* where permissible and insurable under applicable law;
- 3.27.11 *personal expenses*;
- 3.27.12 *prosecution costs*;
- 3.27.13 *personal reputation protection expenses*;
- 3.27.14 *company reputation protection expenses* (under extension 2.2 'Company reputation cover'); and
- 3.27.15 *indemnity costs for shareholder derivative claims* (under extension 2.7 'Indemnity costs for shareholder derivative claims').

Only sub-paragraphs 3.27.1 to 3.27.3 are applicable to *securities claims* under Insuring Clause 1.3 of this policy.

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

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

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

3.28 Foreign jurisdiction

foreign jurisdiction means any jurisdiction other than New Zealand.

3.29 Foreign policy

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

3.30 Greenhouse gases

greenhouse gases mean carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆), or any other emission or substance defined by any applicable law as a greenhouse gas.

3.31 Indemnified financial loss

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

3.32 Insured

insured means:

3.32.1 any *insured person*; and

3.32.2 the *company*.

3.33 Insured person

insured person means any:

3.33.1 *director or officer*;

3.33.2 *outside entity executive*;

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

(a) any *securities claim*;

(b) *employment claim*;

(c) any *investigation*; or

(d) all other *claims*, provided that such *claim* is also made concurrently, against a *director or officer*.

Insured person also means any lawful spouse or civil union partner or de facto partner (including same sex relationships) of any *insured person* listed in 3.33.1 to 3.33.3 above, and estates, heirs or legal representatives of any *insured person* listed in 3.33.1 to 3.33.3 above with respect to *wrongful acts* by such *insured person* committed prior to the death, incapacity, insolvency or bankruptcy of the *insured person*, provided that such estates, heirs or legal representatives are subject to the terms, conditions and exclusions of this policy in so far as they can apply.

For the avoidance of doubt, this policy will not cover any *claim* arising out of any act, error or omission of any spouse, civil union partner or de facto partner, estate, heir or legal representatives.

Insured person will not include any agent, contractor, consultant, external auditor, trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, administrator or receiver and manager (or similar official or person appointed for the *policyholder* or the equivalent in any other jurisdiction) of the *company*.

3.34 International program policies

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

3.35 Interrelated wrongful acts

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

3.36 Investigation

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

3.36.1 of an *insured person* in their capacity as such:

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

3.36.2 into the affairs of the *company* or an *outside entity* by an *official body*, once an *insured person* is required or requested to attend in writing, including by a formal or official notice, request, demand or subpoena from an *official body*:

- (a) to examine, interview or depose an *insured person*; or
- (b) for the production of documents by an *insured person*,

in connection with such investigation, examination, hearing, or enquiry.

For the purposes of part 3.36.2 of this definition, *official body* shall not include the U.S. Securities and Exchange Commission or similar U.S. state or local agency.

Investigation does not include industry-wide or sector investigations, examinations, hearings, enquiries or any routine regulatory audit, examination, inspection or review.

An *investigation* shall be deemed to be 'first made' when the *insured person* is first so required or requested to attend in writing, first so served or first so arrested and detained.

3.37 Investigation costs

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

3.38 Investment entity

investment entity means any entity whose equity securities are not registered to trade and have not traded in a public market, in which one or more *investment funds* holds or held a debt or equity interest or has performed or is performing due diligence in anticipation of making an investment of its capital in such entity.

3.39 Investment fund

investment fund means any trust, investment trust, investment fund, fund of fund, investment management company (open or closed ended), special purpose vehicle, managed investment scheme, partnership, undertaking for collective investment, private equity or venture capital fund, real estate fund, sub-fund, compartment, mandate or other similar fund or entity sponsored, created, promoted or managed by the policyholder or a *subsidiary* provided that this definition shall not include any pension or superannuation fund, pension trust or scheme or employees benefit plan.

3.40 Joint venture

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

3.41 Limit of liability

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

3.42 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:

- 3.42.1 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
- 3.42.2 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) and/or any act which, if it occurred in a part of the United States of America, would be unlawful under the Racketeer Influenced and Corrupt Organizations Act, 18 United States Code, Chapter 96.

3.43 Non-indemnified financial loss

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

- 3.43.1 a prohibition under law (statutory or at common law);
- 3.43.2 a prohibition in the *company* charter, by-laws, articles of association or similar documents; or
- 3.43.3 the *company's financial impairment*.

3.44 Non-profit organisation

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

3.45 Official body

official body means:

- 3.45.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or *external administrator* legally empowered to conduct an *investigation* into the affairs of the *company* or *outside entity*, or the conduct of an *insured person* in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; and
- 3.45.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities*.

3.46 Outside entity

outside entity means any:

3.46.1 *non-profit organisation*;

3.46.2 for-profit entity in which the *company* has an equity ownership interest no greater than 50%;

3.46.3 *investment entity*; or

3.46.4 *investment fund*,

but excluding any:

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

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

unless such entity or fund is specified as an *outside entity* in an endorsement to this policy.

3.47 Outside entity executive

outside entity executive means any *director or officer or employee* of the *company* who:

3.47.1 did or will serve or act; or

3.47.2 during the *period of insurance* is serving or acting,

in his or her capacity as a director or officer (or equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request.

3.48 Period of insurance

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

3.49 Personal reputation crisis

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

3.50 Personal expenses

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

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

3.50.2 a charge over real property or personal assets of such *insured person*,

resulting directly from or as part of a covered *claim* and provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

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

3.51 Personal reputation protection expenses

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

3.52 Policyholder

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

3.53 Pollutants

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

3.54 Pre-claim costs

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

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

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

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

3.55 Pre-claim event

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

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

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

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

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

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

3.56 Prior known fact

prior known fact means any fact or matter which:

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

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

3.57 Property damage

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

3.58 Prosecution costs

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

- 3.58.1 a declaration and/or injunction to oppose any *deprivation of asset and liberty proceeding*;
- 3.58.2 the discharge or revocation of an order arising from a *deprivation of asset and liberty proceeding*; and/or
- 3.58.3 a finding that an *official body* is acting beyond its powers or in breach of the rules of natural justice in conducting an *investigation*.

3.59 Schedule

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

3.60 Securities

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

3.61 Securities claim

securities claim means any:

- 3.61.1 written demand for damages or other legal remedy or civil proceeding commenced directly or derivatively by a past or present holder of *securities* of and issued by the *company*, in that holder's capacity as a security holder in the *company*; or
- 3.61.2 a regulatory proceeding commenced by any *official body*, but only in connection with the purchase, sale, or offer to purchase or sell *securities* of and issued by the *company*,

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

A securities claim shall include any *US securities claim*.

3.62 Self report

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

3.63 Shadow director

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

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

3.64 Statutory charge

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

3.65 Submission

submission means:

- 3.65.1 any information and/or statements or materials;
- 3.65.2 any proposal form signed, dated and completed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 3.65.3 the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

3.66 Subsidiary

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

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

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

Cover in respect of:

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

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

Subsidiary does not mean an *investment fund* or *investment entity*.

3.67 Superannuation guarantee charge

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

3.68 Third party

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

3.69 US claim

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

- 3.69.1 within the jurisdiction of; or
 - 3.69.2 pursuant to the laws of,
- the United States of America or Canada or their territories and/or possessions.

3.70 US securities claim

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

- 3.70.1 within the jurisdiction of; or
 - 3.70.2 pursuant to the laws of,
- the United States of America or Canada or their territories and/or possessions.

3.71 Wrongful act

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

- 3.71.1 any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *company* or any matter claimed against such *insured person* solely by reason of his/her status as such, but only with respect to a *claim* under Insuring Clauses 1.1 and 1.2;
- 3.71.2 any *insured person* whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request, but only with respect to a *claim* under Insuring Clause 1.4; or
- 3.71.3 the *company*, but only with respect to a *securities claim* under Insuring Clause 1.3.

4. Exclusions

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

4.1 Bodily injury / property damage

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

- 4.1.1 mental anguish or emotional distress in connection with any *employment claim*; or
- 4.1.2 *financial loss* otherwise covered under extension 2.14 'Workplace health and safety'.

4.2 Conduct

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

- 4.2.1 any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- 4.2.2 any dishonest or fraudulent act or omission committed by any *insured* or any intentional violation or breach of any law or regulation; provided that this exclusion shall not apply to *defence costs* incurred by an *insured person* in connection with a *corporate manslaughter proceeding* or workplace health and safety proceeding.

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

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

For the purpose of determining the applicability of this exclusion:

- (a) no conduct or knowledge of an *insured* shall be imputed to any other *insured person*; and
- (b) only the conduct and knowledge of any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or holder of any equivalent position) of the *company* shall be imputed to the *company*, for the purposes of Insuring Clause 1.3.

4.3 Insured vs insured US claims only

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

- 4.3.1 a *claim* brought or maintained by a liquidator, receiver, bankruptcy trustee or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the *company* or the *outside entity* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*;
- 4.3.2 a *claim* in the form of a derivative action brought or maintained in the name of the *company* or the *outside entity* by one or more persons who are not directors or officers (or equivalent in any other country) of the *company* or the *outside entity* and who bring and maintain the *claim* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*; or
- 4.3.3 *defence costs* incurred by the *insured person*.

4.4 Money laundering

any *claim* made against any *insured*, or any *investigation* arising out of, based upon or attributable to or in any way connected with any actual or alleged act of *money laundering*.

4.5 Prior and pending

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

- 4.5.1 facts alleged or the same or related *wrongful act(s)* alleged or contained in any *claim* or circumstance that has been:
 - (a) notified under any directors and officers or management liability insurance policy or employment practices liability insurance policy of which this policy is a renewal or replacement or which it may succeed in time (unless such prior policy was issued by us and we did not cover or accept such claim or circumstance under such prior policy); or
 - (b) disclosed in the *submission* or notified to any other insurer before the commencement of the *period of insurance*.
- 4.5.2 *investigation* or other proceedings ordered or commissioned at the behest of an *official body* or other legally empowered body as defined in definition 3.36.1 (a) and (c) of this policy initiated prior to or pending on the *continuity date* specified in the *schedule*.
- 4.5.3 any civil, criminal, administrative, regulatory proceeding, litigation, suit, *claim*, proceeding, arbitration or mediation initiated or commenced prior to or pending at the 'Prior or pending date' specified in the *schedule*, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

4.6 Professional services

any *claim* alleging, arising from, based upon, attributable to or as a consequence of the *company's* 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.

This exclusion shall not apply to any *claim* made and maintained on behalf or in the name of a *company* or an *outside entity* by one or more of its shareholders (in the form of a shareholder 'derivative action' or its equivalent) against an *insured* alleging failure to supervise those who performed or failed to perform such professional services or activities, provided that such *claim* is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the *company*, an outside entity or any *insured*.

5. Conditions

5.1 Assignment

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

5.2 Cancellation

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

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

This policy may not be cancelled by the *policyholder*:

- 5.2.1 during the *extended reporting period*, once elected;
- 5.2.2 after the *policyholder* undergoes a *change in control*.

5.3 Change in control and public offering

- 5.3.1 If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy will be amended to only apply in respect of *wrongful acts* or conduct occurring prior to the effective date of such *change in control* until the policy expiry date. The *policyholder* will give us written notice of such *change in control* as soon as reasonably practicable.
- 5.3.2 If during the *period of insurance* the *policyholder* or any *subsidiary* plans or makes, in whole or in part, in the United States of America, a public offering of its *securities* of more than the US market capitalisation increase percentage specified in the *schedule*, it will inform us as soon as practicable. We will not be liable to make any payment of *financial loss* arising from any *securities claim* associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the *policyholder* agrees with us on any amendments to this policy and makes payment of any additional premium required, within 90 days following the public announcement of such offering, after which cover shall apply retroactively for the full *period of insurance*. The payment of any additional premium (including insurance premium tax) will be a condition precedent to our liability under this condition.

5.4 Confidentiality

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

- 5.4.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability;
- 5.4.2 we consent in writing to disclosure of the existence and/or terms of this policy; or
- 5.4.3 the *insured* is compelled by order of a court to do so.

5.5 Connectivity with the Companion policy

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

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

5.6 Deductible and coinsurance

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

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

Irrespective of the number of *insureds* claimed against, a single *deductible* will apply to all *financial loss* in respect of any one *claim*, or two or more *claims* arising from one *wrongful act* or from a series of *interrelated wrongful acts*.

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

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

- (a) the *claim* is dismissed without any payment by or on behalf of the *insured*;
- (b) there is a final judgment of no liability in favour of the *insured* or by settlement to which we have consented or by summary judgment, and without any payment by or on behalf of the *insured*; or
- (c) there is a final judgment of no liability obtained after trial, in favour of the *insured*, after the exhaustion of all appeals.

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

5.7 Defence costs, settlements and allocation

5.7.1 It will be the duty of the *insured* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We will have no duty to defend any *claim* made against any *insured*.

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

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

5.7.3 In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Queen's Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation). The costs of such determination by Queen's Counsel are to be paid by us and will not form part of the *limit of liability*.

If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.

5.7.4 The *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs or prosecutions costs*, and no legal representative will be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.

Only those settlements, consent judgments, *defence costs, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs and prosecutions costs* that have been consented to by us in writing will be recoverable as *financial loss* under the terms of this policy (other than as allowed under extension 2.4 'Emergency costs and expenses').

5.7.5 We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed. In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

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

- (a) between the *insured persons* and any other uninsured person or entity (including the *company*) where the *financial loss* has been jointly or jointly and severally incurred by them. Such allocation will be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured persons* and those other persons or entities; and/or
- (b) between the *insured persons, the company and us*, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Queen's Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation).

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

While no fair and equitable allocation has been agreed or determined in respect of any *claim*, we will advance *defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses and company reputation protection expenses* in the proportion which we contend should be allocated to *financial loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses and company reputation protection expenses* incurred prior to the date of such negotiation or determination.

5.8 Failure of the company to indemnify insured persons

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

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

5.9 Goods and services tax

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

5.10 Law and jurisdiction

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

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

5.11 Limit of liability

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

For the avoidance of doubt:

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

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

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

5.12 Newly created or acquired subsidiaries

5.12.1 Except as stated in parts 5.12.2 and 5.12.3 of this condition, the definition of *company* shall also include any entity whether created or acquired, that becomes a *subsidiary* during the *period of insurance*.

5.12.2 Any such newly acquired *subsidiary* described in 5.12.1 of this condition::

- (a) whose total consolidated assets are greater than the amount or percentage of the total consolidated assets of the *policyholder* (determined as of the date of the acquisition) specified for the 'Newly created or acquired subsidiaries' in the *schedule*; or
- (b) whose securities are publicly traded in a primary, secondary or other market in the United States of America or its territories or possessions,

will not be included within the definition of *company* or *insured*; provided, however, solely with regard to a newly acquired *subsidiary* described in 5.12.2 (a) or (b) of this condition, this policy will provide coverage for a period of ninety (90) days from the date such entity first became a *subsidiary* or until the expiry date of the *period of insurance*, (whichever period expires first).

- 5.12.3 With regard to such *subsidiary* described in 5.12.2 (a) or (b) of this condition, we may, at our sole discretion, extend coverage to such *subsidiary* and any *insured person* thereof, (for a *subsidiary* described in 5.12.2 (a) or (b) of this condition, beyond such ninety (90) day automatic coverage period), if, within the ninety (90) day period after such entity was acquired the *policyholder* will:
- (a) notifies us in writing of the acquisition of such entity;
 - (b) provides us with full underwriting information as we may require; and
 - (c) agrees to any additional premium and/or amendments to the provisions of this policy required by us relating to such *subsidiary*.

Further, coverage as shall be afforded to any such *subsidiary* and any *insured person* thereof shall be conditional upon the *policyholder* paying, when due, any additional premium required by us for such *subsidiary*.

5.13 Non-disclosure and misrepresentation waiver

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

- 5.13.1 against an *insured person* who, before the *period of insurance*, knew the non-disclosure or misrepresentation was fraudulent, and any *company* to the extent that it may indemnify such *insured person*; and
- 5.13.2 against a *company* where any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or the holder of any equivalent position) of the *company* or the holder of any equivalent position in a jurisdiction, knew the non-disclosure or misrepresentation was fraudulent.

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

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

5.14 Notifications – claims, crises, investigations

The *insured* will give written notice to us of any *claim* made against an *insured* during the *period of insurance* or *extended reporting period* (if applicable) or *company crisis* during the *period of insurance* as soon as is reasonably practicable after the *company's* risk manager, general counsel, company secretary, chief legal counsel or equivalent position first becomes aware of such *claim* or *company crisis* and in no event later than 90 (ninety) days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

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

- 5.14.1 *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *claim*;
- 5.14.2 *investigation*, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *investigation*; or
- 5.14.3 *company crisis* and the resultant actual or potential adverse publicity.

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

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

5.15 Order of payments

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

5.16 Order of recoveries

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

- 5.16.1 the costs we have incurred in the course of such recovery;
- 5.16.2 to the *policyholder* in respect of any amount by which the amount of the *financial loss* exceeded the *limit of liability*;
- 5.16.3 to us to the extent of the *financial loss* paid or payable; and
- 5.16.4 to the *policyholder* for the amount of any *deductible* applicable.

5.17 Other insurance and indemnification

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

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

5.18 Plurals and headings

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

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

5.19 Severability and non-imputation

In granting cover under this policy we have relied upon the *submission* which forms the basis of this contract of insurance and will be considered as incorporated in and constituting part of this policy.

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

- 5.19.1 no statement in the *submission* made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured* will be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;

- 5.19.2 the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* will be imputed to the *company* for the sole purpose of determining if cover is available under Insuring Clauses 1.2, 1.4.2 and 1.5 of this policy with respect to *claims* against such *insured person*, but shall not be imputed to the *company* with respect to *claims* against other *insured persons* for the purpose of cover under Insuring Clauses 1.2, 1.4.2 and 1.5 in relation to the *financial loss* of that other *insured person*; and
- 5.19.3 only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *company* will be imputed to the *company* for the purposes of indemnity under Insuring Clause 1.3 in relation to the *financial loss* of any *company*.

5.20 Subrogation

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

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

5.21 Valuation and foreign currency

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

5.22 Waiver of privilege

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

6. Worldwide cover and global liberalisation

6.1 Worldwide cover

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

6.2 Global liberalisation

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

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

6.3 International program policies

6.3.1 Non-aggregation of limits of liability

- (a) It is hereby understood and agreed that corresponding to the liability of the *policyholder* and all *subsidiaries* to pay the aggregate premium for this policy and all *international program policies*, all contractual parties to those policies agree that for the purpose of the calculation of the *limit of liability* of this policy and the Limits of Liability of all *international program policies* (combined), all payments of *financial loss* under this policy and all *international program policies* (or any combination of those policies) are added up and are limited to the amount of the *limit of liability* of this policy (hereinafter called the Aggregate Limit of Liability).
- (b) The Aggregate Limit of Liability will be the maximum Limit of Liability and payment by Zurich, in the aggregate, for all amounts payable under this policy and all *international program policies* combined, except for any amount payable under Extension 2.1 'Additional limits for directors or officers and outside entity executives' in this policy or under any equivalent clause in the *international program policies*.
- (c) The amount specified in the *schedule* as the maximum aggregate additional limit for directors or officers and outside entity executives (hereinafter called the Aggregate Additional Limit of Liability) will be the maximum amount and payment by Zurich, in the aggregate, for all amounts payable under Extension 2.1 of this policy and under all equivalent clauses providing for Additional limits for directors or officers and outside entity executives in all *international program policies*, combined.
- (d) It is further understood and agreed that nothing in the Non-aggregation of limits of liability clause shall be construed to increase:
 - (i) the Limit of Liability set forth in the schedule of the *international program policies*, which will remain the maximum liability under such policies, (save for the operation of any provision equivalent to Extension 2.1 of this policy);
 - (ii) our *limit of liability* under this policy, which will remain our maximum liability under this policy, (save for the operation of Extension 2.1 of this policy); or
 - (iii) the maximum aggregate additional limit for directors or officers and outside entity executives under Extension 2.1 of this policy or any equivalent provision in the *international program policies*, which will remain our maximum liability under those provisions.

6.3.2 Hold Harmless Agreement – special conditions regarding aggregation

In the event that:

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

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

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

6.3.3 Notice and authority for international programs

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

6.3.4 Cancellation and non-renewal of international program policies

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

6.3.5 Master program

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

References to '*financial loss*' in Clauses 6.3.1 and 6.3.2 above, also refer to the equivalent term under each *international program policy*.

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