

Employment Practices Liability Insurance

Policy Wording



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Welcome to Zurich

About Zurich

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

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

Important information

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

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

Employment Practices Liability Insurance

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

1. Insuring Clauses

1.1 Employment Practices Liability cover

We agree to pay on behalf of the *insured* all loss resulting from any *claim* first made against the *insured*, during the *period of insurance* arising from *wrongful employment acts* committed, attempted or alleged to have been committed or attempted by or on behalf of an *employee* of the *company* after the *retroactive date* specified in the *schedule*.

1.2 Third Party Liability cover

We agree to pay on behalf of the *insured* all loss resulting from any *claim* first made against the *insured*, during the *period of insurance* arising from *wrongful employment acts* committed, attempted or alleged to have been committed or attempted by or on behalf of any natural person other than an *insured person* after the *retroactive date* specified in the *schedule*.

2. Extensions of Cover

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

2.1 Continuous cover

We will pay all *loss* resulting from any *claim* by an *employee* or any natural person other than an *insured* first made against the *insured* during the *period of insurance* arising from a *prior known fact* within Exclusion 6.8.3 'Prior and Pending', provided always that:

- 2.1.1 the *insured* has maintained without interruption, employment practices liability insurance with an insurer from the *retroactive date* to the present date;
- 2.1.2 the *insured* would have been indemnified under the employment practices liability insurance policy in force at the relevant time if the *prior known fact* had been notified to the applicable insurer when the *insured* first became aware of it; and
- 2.1.3 neither the *claim* nor the *prior known fact* has earlier been notified to us or at any time to any insurer under any policy; and
- 2.1.4 there has been no fraudulent non-disclosure or misrepresentation to us in respect of the *prior known fact*; and
- 2.1.5 cover under this coverage extension will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time the *policyholder* first became aware of the *prior known fact*, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

2.2 Crisis containment

We will agree to pay *public relations expenses* to or on behalf of the *insured*.

Our total aggregate liability during any one *period of insurance* for all *public relations expenses* will not exceed \$100,000 and will be part of and not in addition to the *limit of liability* as shown in the *schedule*.

2.3 Extended reporting period

If we refuse to renew this policy (other than for non-payment of premium), or the *policyholder* chooses not to renew this policy, the *policyholder* may elect to purchase an *extended reporting period* of 365 days immediately following the expiry of the *period of insurance*. Cover provided during this *extended reporting period* only applies:

- 2.3.1 if the *policyholder* has elected to exercise this option within 30 days of the end of the *period of insurance* and has paid an additional premium of 50% of the current annual premium within 30 days of so electing; and
- 2.3.2 to *claims* arising out of or in connection with conduct committed, attempted or alleged to have been committed or attempted prior to the expiry of the *period of insurance*;
- 2.3.3 if the *policyholder* has not been subject to a merger, takeover, sale, administration, provisional liquidation, liquidation whether voluntary or involuntary, receivership, receivership and management, scheme of arrangement or composition with creditors during the initial *period of insurance*; and
- 2.3.4 if the *insured* has not, following the expiry of the *period of insurance*, obtained coverage of a similar type to this policy from another insurer.

2.4 Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Employment Practices Liability policy in the country where the *policyholder* is domiciled (as indicated in the *schedule*) and such endorsement is to be made available to our clients in such country for no additional premium, then the *policyholder* will have the right to the benefit of such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.

2.5 Merger / Takeover / Sale of Policyholder – Run Off Coverage

If during the *period of insurance*:

- 2.5.1 the *policyholder* merges into or consolidates with another organisation; or
- 2.5.2 another organisation, or person or group of organisations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organisation(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the *policyholder*,

then cover under this policy will continue until the later of:

- (a) the second anniversary of such merger, consolidation or acquisition if during the *period of insurance* the *policyholder* or the *insured persons* give written notice to us of their desire to elect such extended coverage period;
- (b) any subsequent date we agree by endorsement; or
- (c) the termination of this policy,

but only with respect to *claims* for *wrongful employment acts* committed, attempted, or allegedly committed or attempted, by an *insured* prior to the date of such merger, consolidation or acquisition.

Any coverage pursuant to (a) or (b) above will be conditional upon payment during the *period of insurance* by the *policyholder* or the *insured persons* of any additional premium required, and will be subject to any additional terms and conditions, required by us.

Any *claim* made during this extension will be deemed to have been made during the *period of insurance* in which will merger, takeover consolidation or acquisition occurred.

The *policyholder* will give written notice of such merger, consolidation or acquisition to us as soon as practicable, together with such information we require.

2.6 New subsidiary

2.6.1 Any entity, whether created or acquired, that becomes a *subsidiary* during the *period of insurance* of this policy will be included as an *insured* under this policy, at no additional premium, with respect to *losses* for *wrongful employment acts* committed after the date such entity became a *subsidiary* and while such entity remains a *subsidiary*, subject to the following:

- (a) the *subsidiary* is not domiciled in the U.S.A. or Canada;
- (b) the *subsidiary* has gross annual turnover and number of *employees* which are less than 25% of the gross annual turnover and number of *employees* of the *insured* at the inception date of this policy; and
- (c) the *subsidiary* has not, in the preceding 3 years, suffered *loss* of a type covered by this policy (whether insured or not) which was greater than the amount of the *deductible*.

Any such newly acquired or created *subsidiary* not meeting the above requirements acquired or created during the *period of insurance* will be included under this policy as an *insured* for a period of thirty (30) days from becoming a *subsidiary* or until the expiry date of the *period of insurance*, whichever period expires first.

The *policyholder* will:

- (i) notify us in writing of the creation or acquisition of such entity;
- (ii) provide us with full underwriting information as we may require; and
- (iii) agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such *subsidiary*.

Further, we will only cover the *policyholder* for a *loss* resulting from *wrongful employment acts* committed after the date such entity became a *subsidiary* and while such entity remains a *subsidiary* conditional upon the *policyholder* paying, when due, any additional premium required by us for such new *subsidiary*.

2.6.2 We may, at our sole discretion, after having received all appropriate information, cover the *policyholder* for a *loss* resulting from *wrongful employment acts* committed prior to the date of acquisition. With regard to such cover for prior acts, we reserve our right to vary the terms of this policy.

2.7 Past subsidiaries

Coverage will extend to those entities which were once a *subsidiary* but have since ceased to be a *subsidiary*. Cover in this respect will only apply to *claims* arising from *wrongful employment acts* committed or alleged to have been committed by an *insured person*, between the date of the acquisition or creation of the *subsidiary* by the *policyholder* and the date such *subsidiary* ceased to be a *subsidiary*.

2.8 Representation at Official Proceedings

We will pay all reasonable and necessary legal fees, costs and expenses (other than remuneration payable to any *insured person*), incurred with our prior written consent, in respect to any legally required attendance by or on behalf of the *insured* at any *employment related official investigation or proceeding* relating to matters which may give rise to a *claim* under the policy if a notice requiring attendance is received during the *period of insurance*.

2.9 Spouse, Estates, Heirs and Legal representatives

In the event and to the same extent that a *claim* would be covered under this policy if made against an *insured person*, the policy is extended to an *insured person's*:

2.9.1 lawful spouse, if a *claim* against the *insured person* includes her or him solely by reason of:

- (a) such spouse's legal status as spouse of the *insured person*; or
- (b) such spouse's ownership interest in property which the claimant seeks as recovery for a *claim* against the *insured person*.

2.9.2 estates, heirs, legal representatives (such as a guardian, administrator or receiver in bankruptcy) or any assigns of an *insured person* who is incapable of managing his or her own affairs by reason of mental disorder or any other capacity or is deceased, insolvent or bankrupt.

The Extension of Cover does not apply to any *claim* alleging any act, error or omission by the *insured person's* spouse, estates, heirs, legal representatives or assigns.

2.10 Training and Program costs

We will pay all reasonable and necessary costs incurred by the *insured* for educational, sensitivity or diversity training or minority development programs ordered and required pursuant to a determination by a Court, Commission or other tribunal and in connection with a covered *claim* under the policy.

Our total aggregate liability during any one *period of insurance* for reasonable and necessary covered under this Extension of Cover will not exceed \$100,000 and will be part of and not in addition to the *limit of liability* as shown in the policy *schedule*.

3. Definitions

For the purposes of this policy:

3.1 Act of terrorism

act of terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- 3.1.1 involves violence against one or more persons;
- 3.1.2 involves damage to property;
- 3.1.3 endangers life other than that of the person committing the action;
- 3.1.4 creates a risk to health or safety of the public or a section of the public; or
- 3.1.5 is designed to interfere with or to disrupt an electronic system.

3.2 Benefits

benefits means:

- 3.2.1 perquisites, fringe benefits, bonus payments;
- 3.2.2 incentive or deferred compensation;
- 3.2.3 *share based benefits*;
- 3.2.4 medical or insurance benefits and payments due to any person in connection with an employee benefit plan or pension scheme;
- 3.2.5 any other type of compensation or the equivalent value thereof other than salary (including bonus) and wages.

3.3 Company

company means, collectively, the *policyholder* and its *subsidiaries*.

3.4 Compulsory liquidation

compulsory liquidation shall be deemed to have occurred on the date upon which a petition for the compulsory winding up of any such *company* is presented to the relevant authorities.

3.5 Claim

claim means:

3.5.1 a written demand for monetary or non-monetary relief;

3.5.2 a civil proceeding commenced by the service of a complaint, notice of proceeding, statement of claim, writ or similar pleading;

3.5.3 a formal administrative or regulatory proceeding commenced by the *insured's* receipt of a notice of charges, formal investigative order or similar document;

3.5.4 commencement of an arbitration process or other alternative dispute resolution proceeding,

by or on behalf of a former, present or prospective *employee* of the *company* against an *insured* for a *wrongful employment act*, including any resulting appeal.

Claim shall not include any labour or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

3.6 Class action

class action means a threatened, purported, certified or decertified representative actions, or any *claim* brought on behalf of seven (7) or more plaintiffs or claimants.

3.7 Deductible

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

3.8 Defence Costs

defence costs means that part of *loss* consisting of reasonable costs, charges, fees (including but not limited to lawyers' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or *employees* of the *company*) incurred with our written consent in investigating, defending, settling or appealing *claims*.

3.9 Discrimination

discrimination means violation of a person's civil rights with respect to such person's race, colour, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other employment related discrimination prohibited by law.

3.10 Employee

employee means any natural persons while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates (if at all) by salary, wages and/or commissions and whom the *company* has the right to govern, instruct and direct in the performance of such service, including, without limitation volunteers and former, present, part-time, temporary, seasonal, contract and leased employees otherwise described within this definition. *Employee* also means any independent contractor who is treated under applicable law as an *employee* of the *company*.

3.11 Employment related official investigation or proceeding

employment related official investigation or proceeding means an official examination, inquiry, investigation or other proceeding by or before the:

- 3.10.1 the Human Rights Commission or based Equal Employment Opportunities in New Zealand;
- 3.10.2 the New Zealand Employment Relations Authority, Employment Court or Complaints Review Tribunal; or
- 3.10.3 any other similar official investigation conducted by a similar legally empowered body, agency or authority, whose purpose is to address *wrongful employment acts*, including but not limited to the Equal Opportunity Commission in Australia, Equal Employment Opportunity Commission of the United States of America (EEOC) or the Equal Opportunities Commission (EOC) of the United Kingdom, or any governmental body empowered to enforce applicable employment laws.

3.12 Extended reporting period

extended reporting period means the relevant period of cover arising or offered under Extension of Cover 3. 'Extended reporting period'.

3.13 Industrial instrument

industrial instrument means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in New Zealand, including without limitation the New Zealand Employment Relations Authority or similar provisions of any law in New Zealand or the equivalent in any other jurisdiction.

3.14 Insured

insured means the *company* and the *insured person*.

Insured will not include any external auditor, receiver, receiver and manager, official manager, liquidator, administrator (including voluntary appointed administrator), trustee, or other person administering a compromise or agreement of the *insured* or any *employee* of such a person or similar official by or appointed to the *company*.

3.15 Insured person

insured person means any natural person who is a former, present or future:

- 3.15.1 duly elected director or secretary, executive officer or senior manager of the *company* whilst acting in such capacity on behalf of the *company*; or
- 3.15.2 *employee* of the *company* in his or her capacity as such.

3.16 Interrelated wrongful employment acts

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

3.17 Limit of liability

limit of liability means the Limit of Liability stated in the *schedule* which will be our maximum liability, in the aggregate, payable under this policy.

3.18 Loss

loss means the total amount which any *insured* becomes legally obligated to pay on account of each *claim*, including:

- 3.18.1 damages and compensation;
- 3.18.2 back pay arising from an order of reinstatement;
- 3.18.3 judgments, including pre-judgment and post-judgment interest;
- 3.18.4 settlements to which we have consented; and
- 3.18.5 *defence costs*.

loss does not include:

- (i) non compensatory damages including punitive, exemplary or multiple damages;
- (ii) any amount not indemnified by the *company* for which the *insured* is absolved from payment by reason of any covenant, agreement or court order;
- (iii) any amount payable in respect of contractual or statutory notice periods;
- (iv) *benefits*;
- (v) *wage and hour practices*;
- (vi) fines or penalties imposed by law;
- (vii) taxes;
- (viii) the costs to comply with any injunctive, interim or other non-monetary relief or any agreement to provide any such relief;
- (ix) the costs associated with any obligation to adjust or adapt any premises, building or machinery or make any other adjustments or reasonable accommodations required by, or as result of, or to conform with the requirements of local statute, regulation, or common law or any similar provisions of law in another jurisdiction; or
- (x) matters uninsurable under the law pursuant to which this policy is construed.

3.19 Period of insurance

period of insurance means the period of time specified in the *schedule* to this policy including any coverage extension thereto agreed in writing by us.

3.20 Policyholder

policyholder means the organisation designated in the *schedule*.

3.21 Prior known fact

prior known fact means any fact or matter which:

- 3.21.1 an *insured* first became aware of, after the *retroactive date* but prior to the commencement of the *period of insurance*; and
- 3.21.2 knew, or a reasonable person in the position of the *insured* would have considered, at any time after the *retroactive date* but prior to the commencement of the *period of insurance*, might result in an allegation against an *insured* of a *wrongful employment act*.

3.22 Public relations expenses

public relations expenses means all reasonable fees and related expenses incurred by an *insured* with our prior written consent (such consent not to be unreasonably withheld) for public relations, consulting, or crisis management or legal services reasonably required to prevent or limit, adverse effects or negative publicity associated with a *claim* first made or *employment related investigation* or *proceeding*, during the *period of insurance*.

3.23 Retroactive date

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

3.24 Sexual harassment

sexual harassment means unwelcome sexual advances, requests for sexual favours, or other verbal, visual or physical conduct of a sexual nature when such conduct:

- 3.24.1 is linked with a decision affecting an individual's employment;
- 3.24.2 interferes with an individual's job performance;
- 3.24.3 creates an intimidating, hostile or offensive working environment for an individual.

3.25 Schedule

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

3.26 Share based benefits

share based benefits means any actual, beneficial or contingent rights to *benefits*, incentives or other compensation whose value is imputed or derived in any way from the value of the securities of the *company*, including but not limited to, share or stock options, ownership or profit sharing, or any other right to purchase, acquire or sell shares or stock in connection with an employee benefit plan.

3.27 Submission

submission means:

- 3.27.1 any information and/or statements or materials;
- 3.27.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 3.27.3 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.

3.28 Subsidiary

subsidiary means a *company* or any entity in which the *policyholder*:

- 3.28.1 holds directly or indirectly more than 50% of the voting rights;
- 3.28.2 appoints a majority of the board of directors (or equivalent in any other country); or
- 3.28.3 has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

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

Cover applies only to *claims* arising from *wrongful employment acts* committed during the period when the *company* was a *subsidiary*.

3.29 Voluntary liquidation

voluntary liquidation means a liquidation initiated by the *company* passing a special resolution for voluntary winding up.

3.30 Wage and Hour practices

wage and hour practices includes, any 'off the clock' work, provisions regarding rest or meal periods, classification of *employees* as exempt or non-exempt, payment of minimum wages, timely payment of wages, conversions, maximum working hours and fairness of business practices.

3.31 Wrongful employment act

wrongful employment act means any act, error, omission, neglect, misstatement, misleading statement, or breach of duty by the *company* or by one or more *insured persons*, individually or otherwise, made, committed, attempted or allegedly made committed or attempted in their capacities as such or by any other person for whom the *insured* is legally responsible, in connection with any actual, alleged or constructive:

3.31.1 breach of any oral or implied employment contract;

3.31.2 *discrimination* in employment;

3.31.3 *sexual harassment*;

3.31.4 retaliation (including retaliation for whistle blowing);

3.31.5 personal grievance including without limitation wrongful termination, failure or refusal to hire or promote; wrongful discipline; wrongful reference, deprivation of a career opportunity, demotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; workplace harassment including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications; negligent hiring, retention, supervision, training or performance evaluation, misrepresentation, defamation, invasion of privacy or infliction of emotional distress; and

3.31.6 breach, violation or non-compliance with applicable data protection laws in any jurisdiction's federal, state or local statute or regulations governing the information collection, handling, maintaining, use and access to information in employee recruitment, selection, monitoring at work and employment record keeping.

4. Limit of Liability

Our maximum liability for each *claim* and in the aggregate for all *loss* on account of all *claims* made during the same *period of insurance* will be the *limit of liability* for each *period of insurance* noted in the *schedule*.

With respect to all *loss* (excess of the applicable *deductible* amount) on account of all *claims* first made in any one *period of insurance*, the *insured* will bear uninsured at their own risk, that percent of all such *loss* specified as the Coinsurance Percent noted in the *schedule* and our liability will apply only to the remaining percent of all such *loss*.

Defence costs are part of and are not in addition to the *limit of liability* stated in the *schedule*, and the payment by us of *defence costs* reduces such *limit of liability*.

For the purposes of this policy, all *claims* arising out of the same *wrongful employment act* and all *interrelated wrongful employment acts* of any *insured* will be deemed one *claim*, first made when the earliest of such *claims* is first made, whether before or during the *period of insurance*.

Only the policy in effect at that time when the earliest *claim* is first made, if any, will apply to all such *claims*. If the first *claim* was made before the *retroactive date* stated in the *schedule*, all such *claims* are not covered under this policy.

For the purpose of this subsection only, the *extended reporting period*, if exercised, will be part of and not in addition to the preceding *period of insurance*.

5. Deductible

We will be liable only for the amount of any *loss* that exceeds the applicable *deductible*. The *deductible* is not part of our liability for any *loss*.

A single *deductible* will apply to all *loss* arising from any *wrongful employment act* or *interrelated wrongful employment acts*.

6. Exclusions

We will not be liable for *loss* or part of the *loss* arising from any *claim* made against any *insured*:

6.1 Bodily injury / Property damage

6.1.1 for bodily injury, sickness, disease or death of any person, except that cover shall be provided for mental anguish or emotional distress in connection with any *claim*;

6.1.2 for damage to or loss of or destruction of any tangible property including loss of use thereof.

6.2 Derivative action / Class actions

based upon, arising out of, or attributable to any direct derivative action or *class action* brought by any shareholder of the *company* in their capacity as such.

6.3 Employee entitlement

for breach of duties, obligations or responsibilities under law, regulation, by-law, determination made under or pursuant to any statute, ordinance or *industrial instrument* howsoever promulgated regulating *benefits*.

However, this Exclusion will not apply to any *defence costs* incurred by the *insured* with respect to the *wrongful employment acts*.

6.4 Employee reinstatement

based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an *employee* including any future entitlements or *benefits* if the company fails to hire, promote or reinstate the claimant as an *employee*.

However, this Exclusion will not apply to any *defence costs* incurred by the *company* with respect to the *wrongful employment acts*.

6.5 Industrial relations

based upon, arising out of, or attributable to:

6.5.1 any collective industrial or labour relations including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and *employees* in relation to redundancies and other actions that arise; other than *claims* based on an individual employment relationship; or

6.5.2 any collective redundancies or mass-layoffs as.

6.6 Liability of others

based upon, arising out of, or attributable to liability of others assumed by the *insured* under any contract or agreement, either oral or written, provided, however that this exclusion will not apply to the extent that the *insured* would be liable for such *loss* in the absence of such contract or agreement.

6.7 Modifications

for modifications to any premises in order to make them more accessible or accommodating to persons with disabilities, or for the provision of any special facilities, arrangements, variations or alterations to the work place, working hours, work systems or procedures, for the benefit of disabled persons, persons in special circumstances or persons requiring any form of special accommodation due to family or carer responsibilities, cultural, religious, social or political considerations.

However, this Exclusion will not apply to any *defence costs* incurred by the *insured* with respect to the *wrongful employment acts*.

6.8 Prior and pending

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

6.8.1 any demand, suit, *claims*, *employment related official investigation or proceeding*, matter or circumstance existing prior to the *period of insurance* that has been reported or ought to have, but has not, been reported;

6.8.2 fact, circumstance, act or omission, *claim or employment related official investigation or proceeding* disclosed in the *submission* or which notice has been given to any other insurer before the commencement of the *period of insurance*; or

6.8.3 *prior known fact* that ought to have, but has not, been reported,

under any employment practices liability policy of which this policy is a renewal or replacement or which it may succeed in time.

6.9 Prior notice

being:

6.9.1 any litigation, suit, *claim*, arbitration or mediation initiated prior to or pending at the *retroactive date* specified in the *schedule*; or

6.9.2 litigation, suit, arbitration or mediation alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation; or

6.9.3 an *employment related official investigation or proceeding* or other proceedings ordered or commissioned at the behest of a legally empowered body, initiated prior to or pending at the *retroactive date* specified in the *schedule*.

6.10 Radioactivity / Pollution / Asbestos

based upon attributable to or as a consequence of:

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

6.10.2 seepage, pollution or contamination of whatever nature and however occurring;

6.10.3 mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there;

6.10.4 asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising; or

6.10.5 silicon or silica, or any material, substance or property derived from or containing or allegedly containing silicon or silica, in whatever form or quantity and however arising.

6.11 Specified sums under contract

for any salary, wages, commission or bonus or any specified sum of money to be paid:

6.11.1 in respect of or in lieu of a notice period;

6.11.2 pursuant to an express written contract of employment; or

6.11.3 pursuant to an express written obligation to make payments in the event of the termination of employment.

However, this Exclusion shall not apply to any *defence costs* incurred by the *insured* with respect to the *wrongful employment acts*.

6.12 Statutory entitlement

based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, obligations, or duties imposed by any statutory or common law that governs the rights of *employees* to engage in, or to refrain from engaging in, union or other collective activities, or the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings.

6.13 Unfair employment contract

arising from the setting aside, variation, deletion or amendment of any contract or contractual provision, including but not limited to any such provision in a contract of employment, on grounds that it is alleged to be harsh, unfair, unreasonable, unconscionable, in restraint of trade or otherwise contrary to the public interest.

6.14 War, Act of terrorism

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

6.14.1 any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

6.14.1 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

6.15 Worker compensation

based upon, arising from or as a consequence of any actual or alleged obligation of any *insured* pursuant to any workers compensation, unemployment insurance, social security, disability benefits or similar law, regulation or by-law.

7. Conditions

7.1 Allocation

In a situation where:

7.1.1 the *claim* is made against both an *insured* and a party not insured under this policy; or

7.1.2 part of the *loss* which is the subject of a *claim* against an *insured* is covered under this policy but the remainder is not,

there is to be a fair and equitable allocation of the *loss* and all *defence costs* incurred in connection with that *claim*, for the insured and uninsured portions of the *loss*, subject always to the other terms, conditions and limits of this policy.

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

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

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

7.2 Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in New Zealand.

7.3 Assignment

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

7.4 Cancellation

- 7.4.1 The *policyholder* may cancel this policy at any time by giving notice in writing to us;
- 7.4.2 We may cancel this policy by notifying the *insured* in writing, if the *insured* is in breach of the terms or conditions, or for any other reason available at law. Notice of cancellation has the effect of cancelling this policy at 4.00 pm on the 30th business day, after the day on which notice was sent to the *policyholder*;
- 7.4.3 Upon cancellation by the *policyholder* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;
- 7.4.4 Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

However, in the event of the notification of a *loss* which is covered under this policy the premium will be regarded as fully earned and may be retained by us.

7.5 Compulsory or Voluntary liquidation

In the event of a *compulsory liquidation* or *voluntary liquidation* of the *policyholder* or any *subsidiary*, this policy will continue in force in respect of any such *company* but only with respect to any *claim* for *wrongful employment acts* committed, attempted, or allegedly committed or attempted prior to the date of commencement of such *compulsory liquidation* or *voluntary liquidation* and the cover provided ends at the expiration date of the *period of insurance*.

7.6 Defence costs and Settlements

The *insured* shall not admit liability for or settle any *claim* without our consent or incur any *defence costs* or other costs without consent, which shall not unreasonably be withheld.

The *insured* shall assert all appropriate defences and cross claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the *claim*.

We agree to advance the reasonable *defence costs* or other costs incurred by an *insured* in the defence of a *claim* as they are incurred and prior to final adjudication of the *claim*, unless and until we have denied indemnity in respect of the *claim*. We shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, which shall not unreasonably be withheld. We shall retain the right to actively participate in the defence and settlement of any *claim* in respect of which indemnity is sought under this policy.

If we and the *insured* cannot agree upon the appropriateness or otherwise of a settlement, then the matter will be determined in accordance with advice of Queen's Counsel, the choice of whom shall be mutually agreed by the *insured* and us and whose fee shall be paid by us, in addition to the *limit of liability*.

7.7 Other insurance and Non-Accumulation

- 7.7.1 This policy will only cover *wrongful employment acts* to the extent that the amount of *loss* arising from such *wrongful employment acts* is in excess of any indemnity or cover available to the *insured* in respect of those *wrongful employment acts* under any other policy entered into by the *insured persons* or the *company*.
- 7.7.2 This policy will only cover *wrongful employment acts* to the extent that the amount of *loss* arising from such *wrongful employment acts* is in excess of any indemnity or cover available to the *insured* in respect of those *wrongful employment acts* under any other policy effected on behalf of the *insured* or under which any *insured person* or the *company* is a beneficiary (but not a policy to which the preceding paragraph applies).
- 7.7.3 Neither Condition 7.7.1 or 7.7.2 above, applies to such other insurance that is written only as specific excess insurance over the *limit of liability* provided in this policy.
- 7.7.4 If the other insurance referred to in Condition 7.7.1 or 7.7.2 above, is provided by us, or any other member company, associate or affiliate of the Zurich Insurance Group of companies, and it covers *wrongful employment acts* covered by this policy in respect of a *claim* or *employment related official investigation or proceeding*, the *limit of liability* under this policy in respect of that *claim* or *investigation* shall be reduced by any amount paid by us (or member company, associate or affiliate of the Zurich Insurance Group of companies) under such other insurance.

7.8 Payments in respect to Goods and Services Tax

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

7.9 Plurals and Titles

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

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

7.10 Reporting and Notice

The *insured* as a condition precedent to the right to be indemnified under this policy will soon as reasonably possible upon the *discovery* of *loss* the *policyholder* will notify us by written notice, but in all events no later than thirty (30) days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable). Such notice will include but not be limited to a description of the circumstances leading to the *claim*.

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

All notices under any provision of the policy will be made in writing and given by courier, certified mail, email or fax properly addressed to the appropriate party. Any notice under or in connection with this policy that relates to a *claim* shall be given to the appropriate Zurich branch office, addressed as follows:

Head of Claims
Zurich New Zealand
PO Box 497 Shortland Street Auckland 1140

Or by email to:
Head of Claims
fl.claims@zurich.com.au

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

7.11 Sanctions regulation

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

7.12 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.

When the policy insures more than one party the written application(s) for insurance shall be construed as a separate application by each *insured*. Any failure by an *insured* to comply with the Duty of Disclosure shall not be imputed to any other *insured* where that failure is innocent and the *insured* had no prior knowledge of the failure for the purpose of determining if coverage is available. The statements in the application and only knowledge possessed by the chairperson, president, chief executive officer, chief financial officer, chief operating officer, director of human resources, in-house general counsel and company secretary shall be imputed to the *company* for the sole purpose of determining if coverage is available with respect to *claims* against the *company*.

7.13 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 shall be rendered to us in the prosecution of such rights by such *insured persons* or the *company*, at their own cost.

In no event, however, will we exercise our rights of subrogation against an *insured person* under this policy unless it is determined by a written admission, a final judgment or other adjudication in the underlying action or in a separate action or proceeding that such *insured person* had obtained an illegal profit or advantage or committed an intentionally dishonest act or fraudulent act or omission or a criminal act.

7.14 Territorial scope

Coverage under this policy is provided anywhere in the world, where legally permissible.

7.15 Valuation and foreign currency

All premiums, *limits of liability*, sub-limits of liability, *deductibles*, retentions, *loss* and other amounts under this policy are expressed and payable in New Zealand currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars 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 *loss* is due, respectively.

7.16 Waiver of privilege

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

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