

Zurich Professional Indemnity 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 policy is a 'Claims Made and Notified' liability insurance policy. It only provides cover if:

1. A *claim* is made against you during the *period of insurance* and is notified to us during the *period of insurance*; and
2. The *claim* arises out of any act, error or omission which takes place after the *retroactive date* stipulated in the *schedule*.

Duty of Disclosure

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

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

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

Non-disclosure or Misrepresentation

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

Our contract with you

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

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

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

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

Zurich Professional Indemnity Insurance

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

1. Insuring Clause

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

2. Limit of Liability

Subject to Extension of Cover 3.24 'Reinstatement', the *limit of liability* is the total limit of our liability in respect of all *loss* directly or indirectly arising out of or in connection with:

- any single *claim*;
- all *claims* referable to the *period of insurance*; and
- all *losses* otherwise covered under the policy,

will not exceed the respective *limit of liability* or other applicable sub-limit specified in the policy and/or *schedule* and will apply only to the amount by which such *loss* exceeds the prescribed amount of the applicable *deductible*. For the purposes of the application of the *limit of liability*, all *claims* arising out of, based on or attributable to the same cause, single act, error or omissions or series of continuous, repeated or related acts, errors or omissions will be deemed to be a single *claim*.

2.1 Claim expenses – exclusive of Limit of Liability

We agree to pay, in addition to the *limit of liability*, the *claim expenses* arising from any *claim* which is the subject of indemnity under the Insuring Clause, except:

- 2.1.1 where the *insured's* liability exceeds the available *limit of liability*, we will only pay such proportion of the *claim expenses* as the available *limit of liability* bears to the *insured's* liability; and
- 2.1.2 where the amount we have paid or incurred as *claim expenses* exceeds the share that we are obliged to pay, the *insured* will, upon demand, pay us the excess amount or alternatively, we may deduct the excess amount from any entitlements the *insured* may have at any time under this policy.

3. Extensions of Cover

Extensions of Cover are provided, on the same terms and in the same manner as in the Insuring Clause (except as stated). Each Extensions of Covers is subject to all of the other applicable provisions of this policy, including any additional terms stipulated in connection with it, and no Extensions of Cover shall increase our *limit of liability* unless expressly stated otherwise.

3.1 Claim preparation costs

We will pay all reasonable and necessary out of pocket costs incurred by the *insured* at our request in the preparation of a defence to a *claim* covered by this policy up to an aggregate amount of \$50,000 in respect of all *claims* covered by this policy.

Notwithstanding the *deductible* specified in the *schedule*, this extension is subject to a *deductible* of \$1,000. Payments provided under this extension, do not include any *claim expenses*.

3.2 Compensatory penalties

Notwithstanding Exclusion 6.1 'Aggravated, Punitive, Exemplary damages, Fines or Penalties', we agree to indemnify the *insured* for *claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties under the policy shall not exceed \$250,000 in the aggregate for all *claims*.

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

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

3.3 Consultants, subcontractors and agents

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

3.4 Continuous cover

If the *insured* has neglected, through error or oversight only, to notify any *claim* or *circumstances* which could and should have been notified under an earlier policy issued by us of the same type as this one, then provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy we will, notwithstanding Exclusion 6.12.1 'Prior and pending', indemnify the *insured* for the *claim* or *circumstances* under this policy, on the conditions that:

- 3.4.1 the indemnity will be subject to the applicable *limit of liability* of the earlier policy under which the matter should have been notified;
- 3.4.2 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- 3.4.3 the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the *limit of liability*, contained in this current policy; and
- 3.4.4 the *insured* agrees that they will not seek indemnity from us in respect of any such *claim* under both policies issued by us.

3.5 Contractual liability

Notwithstanding Exclusion 6.2 'Contractual liability', we will indemnify the *insured* against a claim for *civil liability* arising from an indemnity and/or hold harmless provision of a contract, to the extent that such *civil liability* arises from the *insured's* provision of *professional services*.

3.6 Court attendance costs

We agree to pay up to \$500 per day for any person who is or was a principal, partner, *director* or an *employee* of the *insured* for court attendance costs incurred by the *insured*, if the *employee*, principal, partner or *director* of the *insured* is legally compelled to attend a civil proceeding as a witness in a *claim* covered by this policy.

Our total aggregate liability under this Extension of Cover for all court attendances by all witnesses in respect of all *claims* shall not exceed \$100,000 any one *period of insurance*.

3.7 Dishonesty

Notwithstanding Exclusion 6.5 'Fraud and dishonesty', we agree to indemnify the *insured* for *loss* resulting from any *claim* alleging conduct of an *employee*, *agent* or partner in the provision of *professional services* that falls or may fall within that exclusion. Provided that:

- 3.7.1 no indemnity is available to the dishonest *employee*, *agent* or partner, or to any person who has knowingly engaged in or condoned such conduct;
- 3.7.2 for the purpose of this extension, *employee* or *agent* shall mean a person or persons in the *insured's* direct service, but shall exclude any principal or *director*; and
- 3.7.3 no indemnity is available in respect of a *claim* arising from or in any way connected with the loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

3.8 Estates and legal representatives

We agree to indemnify the estate, heirs, legal representatives or assignees of any *insured* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insureds* would be entitled to be indemnified in respect of *claims* for *civil liability* made against them.

This extension only provides an indemnity in accordance with the Insuring Clause in respect of *claims* for *civil liability* on the provision of the *professional services* by the relevant *insured*. It does not respond for *professional services* of the *insured's* estate, heir, legal representative or assignee.

3.9 Extended notification period

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

- 3.9.1 we will treat that *claim* as if it had been made against the *insured* and notified to us during the immediately preceding *period of insurance*; and
- 3.9.2 coverage for any such *claim* does not reinstate or increase the *limit of liability* or the Aggregate *limit of liability* or extend the *period of insurance*; and
- 3.9.3 coverage for any such *claim* resulting from the provision of the *professional services* provided or allegedly provided by the *insured* before the end of the *period of insurance* or the cancellation date of this policy where this policy has been cancelled and not before the *retroactive date*.

3.10 Fair Trading Act

We agree to indemnify the *insured* in accordance with the Insuring Clause for any *claim* for *civil liability* alleging a breach of the Fair Trading Act 1986 or any similar trading legislation enacted for the protection of consumers, within New Zealand jurisdiction to the extent that such *claim* is not otherwise excluded under this policy.

3.11 First party copyright infringement

We agree to pay on behalf of the *insured* any reasonable costs and expenses incurred by the *insured* in any proceedings for any injunction, damages or infringement of any copyright vested in the *insured*, and notified to us during the *period of insurance*. Provided that we will not be required to incur any obligation to meet such costs where the cause of action is not one that it is reasonable by the *insured* to pursue. In the event of any dispute arising between us as to the reasonableness of the *insured* pursuing any such cause of action, the opinion of a Queen's Counsel the appointment of whom will be mutually agreed between us will be obtained and his or her decision will be binding. If the parties cannot agree on the appointment of a Queen's Counsel the President of the New Zealand Bar Association will appoint one.

The coverage provided by this extension is always subject to Exclusion 6.17 'USA / Canada exposure' even in the event that the Exclusion has been deleted in respect of the remainder of coverage provided by this policy.

Our total aggregate liability under this Extension of Cover shall not exceed \$100,000 any one period of insurance.

3.12 Inquiries

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

Our total aggregate liability under this Extension of Cover for all attendances at all *inquiries* in respect of *inquiry costs* shall not exceed \$250,000 any one *period of insurance*.

3.13 Intellectual property including Breach of confidentiality

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

Provided always that no indemnity shall be afforded to any *insured* intentionally committing, assisting or condoning such conduct.

The coverage provided by this extension is always subject to Exclusion 6.17 'USA / Canada exposure' even in the event that the Exclusion has been deleted in respect of the remainder of coverage provided by this policy.

3.14 Joint venture

We agree to indemnify the *insured* in respect of a *civil liability claim* resulting from activities in which the *insured* is engaged in the provision of *professional services*, as a partner in a joint venture. No indemnity shall be available hereunder to the *joint venture partner(s)*.

3.15 Libel, slander and defamation

We agree to indemnify the *insured* in respect of any *claim for civil liability* for unintentional libel, unintentional slander or other unintentional defamation by an *insured* in provision of the *professional services*.

3.16 Limitation of liability contracts

Notwithstanding Claims Condition 7.10 'Subrogation', we recognise that the *insured* will enter into contracts with other parties relating to the provision of *professional services* which may waive or otherwise limit the liability of such parties. We agree that such contracts will not prejudice the *insured's* rights to indemnity under this policy. However the cover provided by this extension shall not apply to contracts (whether written or otherwise) entered into as a result of a dispute which in any way involves the *insured*.

3.17 Loss of documents

Notwithstanding Exclusion 6.11 'Personal injury / property damage', we agree to indemnify the *insured* in respect of:

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

3.17.2 all reasonable costs and expenses incurred by the *insured* in replacing and/or restoring such documents.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within the *period of insurance* and rectification of which is undertaken as soon as practicable by the *insured* with our prior written consent, such consent not to be unreasonably withheld; and
- (ii) we shall not be liable for any *claim* under 3.17.1, nor for costs and expenses under 3.17.2 directly or indirectly arising out of or in connection with a computer virus, operational wear and tear or gradual deterioration however caused; or
- (iii) we shall not be liable for any *claim* under 3.17.1 nor for costs and expenses under 3.17.2 directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The *limit of liability* for this extension applies to all *claims* covered under 3.17.1 above, inclusive of *claim expenses*, and costs and expenses under 3.17.2 above, in the aggregate.

Notwithstanding the *deductible* specified in the *schedule*, this extension will be subject to a *deductible* of \$2,000 or the *deductible* shown in the *schedule*, whichever is the lesser.

3.18 Loss mitigation and fee recovery

We agree to meet payment of the *insured's* fee (or balance of the outstanding fee at the time the facts outlined within this extension arise and are submitted to us for consideration) where a client:

- 3.18.1 has expressed dissatisfaction with the *professional services* provided by an *insured*;
- 3.18.2 demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts the *insured* is legally obligated to pay *subcontractors* at the time of the refusal to pay such fees);
- 3.18.3 threatens to bring a *claim* for *civil liability* against the *insured* for a sum greater than the outstanding fee; and
- 3.18.4 agrees not to pursue such *claim* if the *insured* agrees not to press for their outstanding fee.

Our payment of the outstanding fee to the *insured* will only be made if we believe that this will avoid such a *claim* for a greater amount and approval to settle that *claim* in these circumstances has been received by the *insured* from us in writing.

If all attempts to avoid such a *claim* fail and a *claim* is made, it is agreed that the total amount payable by us (including any amount already paid) shall not exceed the *limit of liability*. The *insured* shall pay us any amount that is finally recovered from the client. We will only pay the part of any *claim* for *civil liability* that is covered by this policy.

Our total aggregate liability under this Extension of Cover is \$100,000 any one *circumstance* and in the aggregate for all *circumstances* any one *period of insurance*. A separate *deductible* will apply to each *circumstance* under this extension.

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

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

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

3.20 Newly created / acquired subsidiary

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

- 3.20.1 cover only applies to *claims* for *civil liability* made against the new *subsidiary* occurring within a period of 60 days from the date of the creation or acquisition of the *subsidiary*;
- 3.20.2 cover only applies to such *claims* arising the provision of *professional services* provided subsequent to the date of acquisition or creation of the *subsidiary*;
- 3.20.3 during the time in 3.20.2 above, the *insured* will supply such additional information relating to the new *subsidiary* as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the policy.

3.21 Past subsidiary

We agree to indemnify in accordance with the Insuring Clause those entities which were once a *subsidiary* but have since ceased to be *subsidiary*. Coverage in this respect shall only apply to *claims* for *civil liability* resulting from the provision of the *professional services* provided or allegedly provided between the date of acquisition or creation of the former *subsidiary* by the *insured* and the date such *subsidiary* ceased to be a *subsidiary*.

3.22 Public relations expenses

We agree to indemnify the *insured* for the reasonable fee, costs and expenses to retain the services of a public relations consultant for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of a *claim* covered by this policy. The following terms apply to this extension:

- 3.22.1 the *insured* must notify us within 30 days after first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the circumstances surrounding the *incident*; and
- 3.22.2 during the time in 3.22.1 above, we must have given prior written consent to retain the services of such public relations consultant.

Our total aggregate liability under this Extension of Cover for all public relations expenses in respect of all *claims* shall not exceed \$100,000 any one *period of insurance*.

3.23 Reduction of deductible

Notwithstanding the provisions of Claims Condition 7.3 'Deductible', where the *deductible* for this policy is \$20,000 or less, we agree to reduce it by 50% in respect of any *claim* where such *claim* is settled or disposed of in accordance with the *insured's* obligations under this policy without the involvement of any lawyer for any party, including but not limited to the *insured*, any third party or us.

3.24 Reinstatement

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

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

4. Optional Extension of Cover

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

4.1 Fidelity

Notwithstanding Exclusion 6.5 'Fraud and dishonesty', we agree to indemnify the *insured*, up to the sub-limit shown in the *schedule*, against the direct loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the *insured* or for which the *insured* is legally liable, where such loss results directly from the dishonest or fraudulent act or omission of any principal, partner, *director* or *employee* of the *insured*. Provided always that the following terms apply to this coverage:

- 4.1.1 the loss must be first discovered by the *insured* in the *period of insurance* and is notified in writing to us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the *period of insurance*);
- 4.1.2 we will not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the *insured* concerned;
- 4.1.3 we will not be liable to indemnify any *insured* who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- 4.1.4 loss under this coverage does not include indirect or consequential losses of any nature, including but not limited to liability to third parties, damages of any kind, interest, investigation costs, trading losses or any other liability that is not the direct loss of the property referred to;
- 4.1.5 the *insured* will bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and we will be under no obligation to provide indemnity to the *insured* until such time as we are satisfied that such loss has, in fact, been sustained;
- 4.1.6 all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single *deductible* will apply to such loss; and
- 4.1.7 the *limit of liability* under this extension is the sub-limit specified in the *schedule* and is the total limit of our liability under or in connection with this coverage for all losses.

5. Definitions

5.1 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 any 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:

- 5.1.1 involves violence against one or more persons;
- 5.1.2 involves damage to property;
- 5.1.3 endangers life other than that of the person committing the action;
- 5.1.4 creates a risk to health or safety of the public or a section of the public; or
- 5.1.5 is designed to interfere with or to disrupt an electronic system.

5.2 Agent

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

5.3 Circumstances

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

5.4 Civil liability

civil liability means liability of the *insured* to any civil cause of action for *compensation*, arising from its provision of, or failure to provide, the *professional services*.

5.5 Claim

claim means:

5.5.1 a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served on the *insured*; or

5.5.2 an oral or written demand for *compensation* made by a third party against the *insured*.

5.6 Claim expenses

claim expenses means all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any *claim*, except any internal or overhead expenses or costs incurred by an *insured* and any salary or remuneration of any *employee*.

5.7 Compensation

compensation means monetary compensation which the *insured* is legally obligated to pay or damages or non-monetary or injunctive relief whether by a judgment or award, or a settlement negotiated with our prior written consent, but does not include *claim expenses*.

5.8 Deductible

deductible means the amount stated in the *schedule*, which will be the responsibility of the *insured*, as applicable, in respect of each *claim* or request for indemnity under the policy and to all Extensions of Cover and any Optional Extension of Cover (unless otherwise stated).

5.9 Deemed employee

deemed employee means any natural person who was or now is a contractor or consultant who has an oral or written contract with the *insured*, (including any *subsidiary* of the *insured*), to perform *professional services* for and on behalf of the *insured*.

5.10 Director

director means any natural person who was or now is a director or officer of the *insured* or any *subsidiary* (or the equivalent position in any jurisdiction) or who becomes a director or officer of the *insured* or any *subsidiary* (or the equivalent position in any jurisdiction) during the *period of insurance*, including de jure, de facto and shadow directors.

5.11 Employee

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

5.12 Family member

family member means any spouse, former spouse, partner, parent, child, grandparent, aunt, uncle, niece, nephew, cousin or sibling of an *insured*.

5.13 Incident

incident means an event occurring within the *period of insurance* which causes the *insured's* reputation and skill in the provision of the *professional services* to be brought into question.

5.14 Inquiry

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

5.15 Inquiry costs

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

5.16 Insolvency

insolvency means in relation to any *insured*:

- 5.16.1 being under administration or insolvent, as defined in the Companies Act 1993;
- 5.16.2 having a controller (as defined in the Companies Act 1993) appointed;
- 5.16.3 being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- 5.16.4 being otherwise unable to pay any debts as and when they fall due; or
- 5.16.5 having anything with the same or similar effect happen under the laws of any jurisdiction.

5.17 Insured

insured means:

- 5.17.1 the legal entity, partnership, company or corporation specified in the *schedule* as the *Insured*, including the *policyholder* if applicable;
- 5.17.2 the predecessors in business of the *insured* as stated in 5.17.1 above;
- 5.17.3 any natural person who:
 - (a) at inception of the *period of insurance*, is a principal, partner or *director* of the *insured*; or
 - (b) prior to inception of the *period of insurance*, was a principal, partner or *director* of the *insured* but only where that person performed work as a principal, partner or *director* of a prior professional practice providing the same professional services as the *insured's professional services* and only if such prior practice is declared in the *proposal*;
- 5.17.4 any natural person who during the *period of insurance*, becomes a principal, partner or *director* of the *insured* in respect of the provision of the *insured's professional services* and, if we agree by endorsement to this policy, in respect of work performed by such person as a principal, partner or *director* of any prior professional practice specified in that endorsement but only to the extent that the prior professional practice provided the same professional services as the *insured's professional services*;
- 5.17.5 any former principal, partner or *director* of the *insured* (in respect of work performed for and on behalf of the *insured* in the provision of *professional services*);
- 5.17.6 any past or present *employee* of the *insured* acting within the scope of their employment in the provision of the *insured's professional services*; and
- 5.17.7 any *subsidiary* at inception of this policy or as otherwise agreed by us to be covered under Extension of Cover 3.20 'New created / acquired subsidiary.'

5.18 International program policies

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

5.19 Joint venture partner

joint venture partner means any natural person or entity with whom the *insured* is engaged in a common venture, the profits of which are to be shared between the *insured* and that other person or entity including any jointly owned company or corporation incorporated or designated for the purpose.

5.20 Limit of liability

limit of liability means the total limit of our liability, under or in connection with this policy, in respect of *loss* in connection with any one *claim* or with all *claims* in the *period of insurance*, as specified in the *schedule*. Any applicable sub-limit is part of, and does not increase, the *limit of liability*.

5.21 Loss

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

5.21.1 *compensation* and/or claimant's costs pursuant to an award or judgment against the *insured*;

5.21.2 settlements negotiated by us and consented to by the *insured*;

5.21.3 settlements negotiated by the *insured* but only with our prior written consent;

5.21.4 *claim expenses*; and

5.21.5 *inquiry costs*.

But *loss* does not include:

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

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

5.22 North America

North America means:

5.22.1 the United States of America and Canada; and

5.22.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

5.23 Period of insurance

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

5.24 Personal injury

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

5.25 Policyholder

policyholder means only the legal entity stated in the policy *schedule*.

5.26 Pollutant

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

5.27 Professional services

professional services means those activities specified in the *schedule* performed by the *insured*. It does not include the provision of services as a superannuation trustee in any respect, nor acting in a capacity as a *director* or officer.

5.28 Property damage

property damage means physical injury to or destruction or damage of or to tangible property, including the resultant loss of use of that damaged or destroyed property and any consequential losses resulting therefrom.

5.29 Proposal

proposal means any information and/or statements or materials supplied to us including any application form completed and signed by the *insured* and any attachments thereto.

5.30 Retroactive date

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

5.31 Schedule

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

5.32 Sub-contractors

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

5.33 Subsidiary

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

5.33.1 controls the composition of the board of directors; and/or

5.33.2 controls more than half of the voting power; and/or

5.33.3 holds more than half of the issued share capital or other ownership of the entity,

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

6. Exclusions

We will not pay anything in respect of:

6.1 Aggravated, Punitive, Exemplary damages, Fines or Penalties

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

- 6.1.1 fines, taxes, penalties, treble or other multiple compensatory damages, exemplary, punitive, liquidated or aggravated damages;
- 6.1.2 the return, restitution, or offset of fees, expenses or costs paid to an *insured*; or
- 6.1.3 any other damages deemed uninsurable in law.

6.2 Contractual liability

any *claim* arising from or in connection with:

- 6.2.1 any contractual liability or assumed liability, unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability;
- 6.2.2 any liability assumed by an *insured* under any guarantee or warranty unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability; or
- 6.2.3 any trading debt incurred by the *insured*.

6.3 Directors and officers

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

6.4 Employer's liability

- 6.4.1 any *claim* for *personal injury* of any *employee* of the *insured* or for the destruction, loss or damage to any tangible property belonging to an *employee*, including loss of use thereof, arising in the course of their employment; or
- 6.4.2 any *claim* arising out of any obligation for which the *insured* or any carrier as its Insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.

6.5 Fraud and dishonesty

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

6.6 Insolvency

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

6.7 Licensing inquires

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

6.8 Manufacturing / efficacy / faulty workmanship

any *claim*, *loss* or other amount comprising, directly or indirectly arising out of or in connection with:

- 6.8.1 the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 6.8.2 the cost of remedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 6.8.3 any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good; or
- 6.8.4 any element of any of the *insured's* own costs or profit that may be included in the cost of rectifying any defects in work performed by or on behalf of the *insured*.

6.9 Money and negotiable instruments

any *claim* directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes. This exclusion will not apply to Optional Extension of Cover 4.1 'Fidelity' is operative.

6.10 Owners and occupiers liability

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

6.11 Personal injury / property damage

6.11.1 any liability for *personal injury* suffered or incurred by any person; and/or

6.11.2 any loss of property or *property damage*,

other than as the direct result of *professional services* having been or being performed, undertaken or provided by or on behalf of the *insured*.

6.12 Prior and pending

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

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

6.13 Radioactivity / pollution / asbestos

any *claim* directly or indirectly arising from or in connection with:

- 6.13.1 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. For the purpose of this Exclusion 6.13 combustion shall include any self-sustaining process of nuclear fission;
- 6.13.2 seepage, pollution or contamination of any *pollutant* by whatever nature and however occurring;
- 6.13.3 mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there;

- 6.13.4 asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising; or
- 6.13.5 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.

6.14 Related entities

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

- 6.14.1 any *insured*, (in whatever capacity), business venture or related or associated entity of any *insured* which is owned, managed or operated directly or indirectly by any *insured*;
- 6.14.2 any person who at the time of the conduct giving rise to the *claim*, is a *family member*, unless such person is acting without the co-operation or solicitation of any *insured*;
- 6.14.3 any *joint-venture partner* of any *insured*;
- 6.14.4 any parent or controlling entity, successor or assign of any *insured*; or
- 6.14.5 any other person or entity, including but not limited to a trustee:
 - (a) who or which is controlled or operated by any *insured*; or
 - (b) where any *insured* has a direct or indirect financial interest, including but not limited to where any *insured* is a beneficiary of a trust.

6.15 Retroactive date

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

6.16 Superannuation trustee

any *claim* directly or indirectly arising from or in connection with conduct of any *insured* in the capacity of a superannuation trustee, including but not limited to in connection with any employee benefit plan or superannuation fund.

6.17 USA / Canada exposure

- 6.17.1 any *claim* directly or indirectly arising out of or in connection with conduct of the *insured* anywhere within the territorial limits of *North America*;
- 6.17.2 any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within *North America*;
- 6.17.3 the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within *North America*;
- 6.17.4 any *claim* which is pursued by way of Arbitration, Mediation, Conciliation, Expert Determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of *North America*, or for the recovery of any award or costs issued or incurred in connection with any such procedure.

6.18 War, Act of terrorism

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

- 6.18.1 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; or
- 6.18.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

7. Claims Conditions

The following Claims Conditions apply to the policy.

7.1 Advance payment of claim expenses

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

7.1.1 indemnity under this policy is confirmed in writing by us; or

7.1.2 at our absolute discretion, without admitting indemnity, we agree to advance such *claim expenses*.

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

7.2 Allocation

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

If both are unable to agree on an allocation of *claim expenses*, we will, subject to Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* in accordance with that Condition. If the parties cannot agree on allocation, we will, subject to Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

If requested by the *insured*, we will submit any dispute on allocation to a Queen's Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the New Zealand Bar Association, on the basis that the Queen's Counsel shall determine the allocation according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in Claims Condition 7.2 'Allocation'. The costs of Queen's Counsel shall constitute *claim expenses* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

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

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

7.3 Deductible

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

The *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss* and *claim expenses*. All *claims* arising out of, based on or attributable to the same cause, single act, error or omission or series of continuous, repeated or related acts, errors or omissions shall be deemed to be a single *claim* and only one *deductible* will be payable by the *insured*. The *deductible* will be the first amount borne by the *insured* and shall remain uninsured.

Where we make a payment in relation to a *claim* which includes payment of part or all of the *deductible* the *insured* shall, within 30 days of being notified by us, reimburse us for the amount of the *deductible* paid by us.

7.4 Defence and settlement

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

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

We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, which will not unreasonably be withheld. We will 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 will be mutually agreed by the *insured* and us and whose fee will be paid by us, in addition to the *limit of liability*.

7.5 Handling and co-operation

The *insured* will, at its own cost, upon our request:

- 7.5.1 give all such information and assistance to us as we may reasonably require in order to investigate any *loss* and determine our liability under this policy;
- 7.5.2 cooperate in the defence of any *claim* including the assertion of any cross-claim for contribution, indemnity or damages; and
- 7.5.3 do all things reasonably practicable to avoid or diminish any *loss* under this policy.

The *insured* will also inform us of any other insurance, indemnity or other source of compensation, statutory, contractual or otherwise, pursuant to which the *insured* may be entitled to any benefit in respect of the *claim*.

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

If we wish to settle a *claim* and the *insured* is opposed to such settlement, our total aggregate payments for damages and *claim expenses* under this policy shall be limited to the amount by which the *claim* could have been settled in our opinion.

Legal fees and costs awarded to the *insured* will pass to us to the extent of our payments under this policy.

7.6 Multiple insured, claims and claimants

All *claims* arising out of, based on or attributable to the same cause, single act, error or omission or a series of continuous, repeated or related acts, errors or omissions shall be deemed to be a single *claim*, for the purposes of the *limit of liability* and the *deductible*.

7.7 Other insurance

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

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

7.8 Payments in respect to Goods and Services Tax

All sums insured under 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 Reporting and notice

The *insured* will as a condition precedent to their right to be indemnified under this policy, give to us written notice as soon as practicable of any *claim* made or threatened against the *insured* or *loss* for which indemnity is sought.

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

The Claims Manager
Zurich New Zealand
PO Box 497
Shortland Street Auckland 1140

Once any *circumstances* referred to above are notified to us during the *period of insurance*, any subsequent *claim* or *loss* that arise from those *circumstances* is covered under this policy as though the *claim* or *loss* itself was notified during the *period of insurance*.

All other material 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.

7.10 Subrogation

We will be subrogated to all rights of recovery of any *insured* against any person or organisation before or after any payment or indemnity under this policy. The *insured* will give all such assistance in the exercise of rights of recovery as we may reasonably require. Such subrogated rights will first benefit us and then the *insured*.

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

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

7.11 Valuation and foreign currency

All premiums, *limits of liability*, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of *loss* under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of *loss* is due, as the case may be.

7.12 Waiver of privilege

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

8. General Conditions

The following General Conditions apply to the policy.

8.1 Alteration to risk

The *insured* will give notice to us in writing as soon as practicable of any material alteration to the risk during the *period of insurance*. A material alteration to the risk includes, without limitation:

- 8.1.1 activities that are materially different from those declared in the *proposal*;
- 8.1.2 activities outside the normal activities of the *professional services*;
- 8.1.3 *insolvency* in relation to any *insured*; and
- 8.1.4 any loss of or conditions imposed upon any licence or other authority required by the *insured* to practice the *professional services*.

8.2 Assignment

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

8.3 Authorisation

The *insured* authorises the legal entity specified in the *schedule* to act on behalf of all persons and entities comprising the *insured* with respect to the giving and receiving of any notice under or in connection with this policy, the payment and return of premium and the negotiation, agreement to and acceptance of endorsements.

8.4 Cancellation / termination

- 8.4.1 The *insured* may cancel this policy by giving us notice in writing at any time, such cancellation to take effect 30 days from the time of receipt of notification to us.
- 8.4.2 We may cancel this policy at any time by giving notice in writing to the *insured*, such cancellation to take effect 30 days from the time of receipt of notification by the *insured*.
- 8.4.3 After cancellation by the *insured* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.
- 8.4.4 After 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 *claim* or *circumstance* which is covered under this policy, the premium shall be regarded as fully earned and may be retained by us.

8.5 Changes to the policy

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

8.6 Late arising extensions

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

8.7 Plurals and titles

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

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

8.8 Proper law and jurisdiction

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

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.

8.9 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 the *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* which would violate any applicable trade or economic sanctions, law or regulation.

8.10 Severability and non-imputation

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

8.10.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and

8.10.2 for the purposes of the exclusions (other than Exclusion 6.12 'Prior or pending'), no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

8.11 Worldwide territorial / jurisdictional limits

Subject to the terms and conditions of the policy (including but not limited to Exclusion 6.17 'USA / Canada exposure') and anything specified to the contrary in the *schedule*, this policy shall apply to:

8.11.1 conduct committed, attempted or alleged to have been committed or attempted, anywhere in the world;

8.11.2 *claims* made and actions brought anywhere in the world.

If the *schedule* specifies a Territorial or Jurisdictional Limit, then coverage under this policy is restricted to the specified Limits. However, that specified Limit does not restrict the operation of Exclusion 6.17 'USA / Canada exposure'.

9. International Programs

9.1 Master program

This policy acts as a master Professional Indemnity Insurance 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.

9.2 Non-Aggregation of Limits of Liability Clause

It is hereby understood and agreed that corresponding to the liability of the *policyholder*, the *insured* and all *subsidiaries* to pay the aggregate premium for this policy and all *international program policies*, all contractual parties to this policy and all *international program policies* agree that for the purpose of the calculation of the *limit of liability* of this policy and all *international program policies* (combined), all payments of *loss* (or equivalent terms as defined under each International Program Policy) under:

9.2.1 this policy; and

9.2.2 all *international program policies*,

(or any combination of the above mentioned policies)

are added up and are limited to the amount of the *limit of liability* as indicated in the *schedule* (hereinafter called Aggregate Limit of Liability).

The Aggregate Limit of Liability shall be the maximum *limit of liability* and payment by Zurich, in the aggregate, for all *loss* (or equivalent terms as defined under each International Program Policy) payable under this policy and all *international program policies* combined. It is further understood and agreed that nothing in the Non-Aggregation of Limits of Liability Clause shall be construed to increase:

- 9.2.3 the *limit of liability* set forth in the *schedule* of any other *international program policies*, which shall remain our maximum liability under this policy; or
- 9.2.4 our *limit of liability* under this policy as set forth in the *schedule* of this policy, which shall remain our maximum liability under this policy.

9.3 Hold Harmless Agreement – Special Conditions regarding Aggregation

In the event that the Aggregate Limit of Liability (defined in Section 9.2) is exceeded by any and/or all payments under this policy and/or any or all *international program policies*, the *policyholder* will reimburse Zurich and/or any partners of Zurich that issued any International Program Policy in respect of any *loss* (or equivalent terms as defined under each International Program Policy) 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.

Any amount payable due to the terms of this clause will be paid by the party within twenty-eight (28) days of notice from the other party.

9.4 Notice and Authority for International Programs

It is agreed that the *policyholder* will act on behalf of the *insured's* and each and every *insured* with respect to the issuance and development of this policy and all *international program policies*, including all terms, conditions, exclusions and limitations of such *international program policies*, including, but not limited to Section 9.2 above. It is further understood and agreed that the *policyholder* will inform the *insured's* of any International Program Policy to be issued.

9.5 Cancellation and Non-renewal of International Program Policies

All *international program policies* are coterminous, accordingly if this policy is cancelled, rescinded or non-renewed then all other *international program policies* shall be deemed cancelled, rescinded or non-renewed with effect from the same date.

Zurich Australian Insurance Limited

(incorporated in Australia)

Trading as Zurich New Zealand

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Zurich Professional Indemnity Insurance

Policy Wording

