



ZURICH

# Directors & Officers Liability Solutions

- A member of the Global Zurich Financial Services Group



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# Important

## Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth.)

This Notice is provided in connection with but does not form part of the Policy.

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

1. a claim is made against the Insured, by some other person, during the period when the policy is in force; and
2. the Claim arises out of a Wrongful Act committed, attempted or alleged to have been committed or attempted after the Retroactive Date stipulated in the Policy Schedule.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the Insured becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the Insured notifies the Insurer of the matter before the policy expires, the Insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the Insured while the policy is in force. If the Insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to the Insurer before the expiry of the policy, the Insured will not have the benefit of Section 40(3) and the Insurer may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the Wrongful Acts alleged in it may have taken place during the Period of Insurance. If a claim is actually made against the Insured by some other person during the Period of Insurance but is not notified to the Insurer until after the policy has expired, the Insurer may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

# Claims Made Coverage

Subject to payment of the premium set out in the Schedule, ZURICH AUSTRALIAN INSURANCE LIMITED, ABN 13 000 296 640, AFS Licence No. 232507 (the Insurer) agrees with the Insured to provide insurance on the terms set out in this policy.

This policy consists of this policy wording, the proposal form, the Schedule and any applicable extensions or endorsements.

## Section 1 – Insuring Clauses

In respect of any Claim first made against any Insured Person(s), whether jointly or severally, during the Period of Insurance:

### Directors & Officers Liability Coverage

- 1.1 the Insurer agrees to pay on behalf of such Insured Person(s) any Loss in respect of which the Insured Person(s) is not lawfully indemnified by the Insured Entity; and

### Company Reimbursement Coverage

- 1.2 the Insurer agrees to pay on behalf of the Insured Entity any Loss for which the Insured Entity is lawfully permitted or required to indemnify such Insured Person(s).

# Section 2 – Coverage Extensions

Cover is automatically provided, at no additional premium, for the coverage extensions described below. Each coverage extension is subject to the other provisions of this policy and no coverage extension shall increase the Insurer's Limit of Liability, unless expressly stated otherwise.

## Civil Penalties

2.1 The Insurer agrees to extend coverage to an Insured Person for any legally insurable civil penalty, which is compensatory by nature and incurred by the Insured Person as a result of a Claim.

The cover provided by this extension:

- i. applies only to civil penalties imposed in the jurisdictions of Australia and New Zealand, pursuant to the laws of Australia and New Zealand; and
- ii. is subject to an aggregate limit of \$500,000 for all Claims made during the Period of Insurance, inclusive of Defence Costs, and to an excess of \$10,000 in respect of each and every Claim; and
- iii. applies only in respect of conduct which is an unintentional breach of the relevant law, statute, regulation or by-law.

## Continuous Cover

2.2 Where:

- i. a Claim should have been notified to the Insurer under an earlier policy issued by the Insurer to the Insured; and
- ii. the Insured's failure to notify the Claim to the Insurer is not fraudulent; and
- iii. the Insurer was and has since continued without interruption to be the Insured's directors and officers liability and company reimbursement insurer,

then in respect of any Claim first made against the Insured during the period of continuous cover, notwithstanding anything else contained in this policy to the contrary, the Insurer agrees to indemnify the Insured against such Claim in accordance with the terms and conditions of this policy, but subject to a limit of liability and excess applicable to the policy under which the Claim should have been notified.

## Estates & Legal Representatives

2.3 The Insurer agrees to cover the estate, heirs, legal representatives or assigns of an Insured Person who is incapable of managing his or her own affairs by reason of mental disorder or other incapacity, or is deceased, insolvent or bankrupt, to the same extent as any Claim made against the relevant Insured Person.

## Extended Reporting Period

- 2.4 If the Insurer shall refuse to renew this policy (otherwise than for non-payment of premium), the Insured Entity may elect to purchase an Extended Reporting Period of one hundred and eighty (180) days (six (6) months) immediately following the expiry of the Period of Insurance. Coverage provided during this Extended Reporting Period only applies:
- i. if the Insured Entity has elected to exercise this option within thirty (30) days of the end of the Period of Insurance and has paid an additional premium of fifty (50) percent of the current annual premium within thirty (30) days of so electing;
  - ii. to Claims arising out of or in connection with Wrongful Acts committed, attempted or alleged to have been committed or attempted prior to the expiry of the Period of Insurance;
  - iii. if the Insured Entity 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;
  - iv. 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.

For the purposes of this extension, the offer by the Insurer of renewal terms and conditions which differ, however materially, from those contained in or applicable to this policy shall not constitute a refusal to renew this policy.

## Inquiries, Prosecutions & Hearings

- 2.5 The Insurer agrees to pay Defence Costs of an Insured Person at any inquiry, prosecution or hearing at which an Insured Person is legally compelled to attend and which relates to matters which may give rise to a Claim. This extension only applies if the:
- i. requirement for an Insured Person to attend the inquiry, prosecution or hearing was imposed on the Insured Person during the Period of Insurance; and
  - ii. Insurer's consent is obtained before any costs, charges or expenses are incurred; and
  - iii. inquiry, prosecution or hearing in question does not take place anywhere within the territorial limits of the United States of America, the Dominion of Canada or their Territories or Protectorates and does not involve proceedings before any court, tribunal or other judicial or investigative body exercising actual or purported jurisdiction under the laws of either of those countries, their Territories or Protectorates.

## Joint Venture

- 2.6 The Insurer agrees to cover a Claim made against an Insured Person arising from any Joint Venture, but such coverage does not extend to any Claim brought by or on behalf of any Joint Venture party(ies) or any vehicle established to conduct, control or manage such Joint Venture.

## Merger/Takeover/Sale/Winding Up of Insured Entity – Run Off

2.7 If during the Period of Insurance the Insured Entity is 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, then coverage shall continue through to the expiry of this policy, and apply only to Wrongful Acts committed, attempted or alleged to have been committed or attempted prior to the effective date of the merger, takeover, sale, administration, liquidation whether voluntary or involuntary, receivership, receivership and management, scheme of arrangement or composition with creditors.

Cover provided in accordance with this extension may be extended, solely at the discretion of the Insurer, for an additional Period of Insurance, to a maximum of eighty four (84) months on such terms and conditions as the Insurer may impose.

## No Excess – Repayment of Excess for No Liability

2.8 No excess shall apply in relation to a Claim where final judgment is obtained and no Insured Person(s) is liable for that Claim under that final judgment. Final judgment shall be taken to have been given only where:

- i. the Claim is subject to a successful motion to dismiss or motion for summary judgment prior to the Claim proceeding to trial; or
- ii. judgment has been given following the Claim proceeding to trial and all appeals therefrom have been exhausted.

This extension does not apply to Claims that are settled prior to final judgment being obtained.

## Occupational Health & Safety

2.9 Notwithstanding Exclusion 3.1, the Insurer agrees to pay Defence Costs in relation to the prosecution, during the Period of Insurance, of any Insured Person(s) under any occupational health and safety legislation in respect of workplace conditions and procedures.

## Outside Directorships

2.10 The Insurer agrees to cover Outside Directorships of an Insured Person. This extension only applies if the:

- i. Outside Directorship is listed on the Schedule; or
- ii. Outside Directorship is with a Non-Profit Organisation or Associated Company.

Cover shall automatically apply to any Outside Directorship the Insured Entity seeks to have listed on the Schedule for a period of thirty (30) days from the date of the Insured Person's appointment.

However,

other than in the case of Non-Profit Organisations and Associated Companies, cover shall cease after thirty (30) days from the date of appointment unless the Insurer agrees to continue cover and lists the Outside Directorship on the Schedule. The following conditions apply to this extension:

- a. cover is specifically in excess of any other insurance and/or indemnity available to the Insured Person by reason of holding the Outside Directorship;
- b. cover will only apply where the outside company or legal entity is not required or permitted to indemnify the Insured Person;

- c. this extension shall not be construed to extend cover to the outside company or legal entity in which the Outside Directorship is held, or to any other director, officer or employee of that outside company or legal entity;
- d. for the purposes of this extension, Exclusions 3.3 and 3.5 shall include the outside company or legal entity as the Insured Entity and the outside company's or legal entity's directors or officers as Insured Person(s).

Outside Directorships listed on the Schedule during a period of continuous cover qualify automatically for cover on renewal of this policy, without the need for resubmission to the Insurer and rescheduling.

## Past Outside Directorships

2.11 The Insurer agrees that where an Insured Person ceases to hold an Outside Directorship during the Period of Insurance, cover shall continue in respect of that Outside Directorship in accordance with Coverage Extension 2.10.

However,

coverage in this respect shall only apply to Claims arising from Wrongful Acts committed, attempted or alleged to have been committed or attempted prior to the date the Insured Person ceased to hold the Outside Directorship.

## Pollution Cover – Defence Costs

2.12 Notwithstanding Exclusion 3.7, the Insurer will pay reasonable Defence Costs incurred by an Insured Person in defending a Claim alleging a Wrongful Act in connection with the sudden, unintended and accidental discharge, dispersal, release or escape of pollutants. Payment under this extension shall not exceed \$500,000 any one claim and in the aggregate and is subject to an excess of \$50,000 applicable to each and every Wrongful Act giving rise to the Claim, unless otherwise specified in the Schedule.

This extension shall only apply to Claims brought in and alleging Wrongful Acts committed in Australia and New Zealand only.

The term 'pollutants' shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalies, chemicals or waste materials. Waste materials include materials to be recycled, reconditioned or reclaimed.

## Pollution Cover – Shareholder Direct/Derivative

2.13 Notwithstanding Exclusion 3.7, coverage shall apply to any Claim made against any Insured Person(s) either directly or derivatively by any shareholder of the Insured Entity alleging loss to the Insured Entity or its shareholders, unless any Insured Person(s) with managerial responsibilities over environmental affairs, control or compliance, knew of any situation, circumstance or Wrongful Act which could give rise to a Claim against the Insured.

## Preservation/Presumption of Right to Indemnity

2.14 In the event and to the extent that the Insured Entity is permitted or required to indemnify any Insured Person(s) for a Loss in accordance with Insuring Clause 1.2, but for whatever reason fails or refuses to do so, then the Insurer shall pay on behalf of the Insured Person(s). In such an event, the company reimbursement excess specified in the Schedule shall be borne by the Insured Entity. In the event of the Insured Entity being placed in liquidation (other than voluntary liquidation), no excess amount shall apply.

## Securities

2.15 Notwithstanding Exclusions 3.4 and 3.11, the Insurer agrees to cover a Claim made against an Insured Person where such Claim arises out of or is attributable to:

- i. any offer, invitation, sale or issue of any securities or any right to any securities of the Insured Entity, including but not limited to dividend reinvestment plans, bonus share plans or employee share option plans; or
- ii. the issue of any information memorandum by the Insured Entity in relation to any securities or right to any securities of the Insured Entity.

## Spousal Liability

2.16 If a Claim against an Insured Person includes a claim against the Insured Person's lawful spouse solely by reason of:

- i. such spouse's status as spouse of the Insured Person; or
- ii. such spouse's ownership interest in property which the claimant seeks as recovery for alleged Wrongful Acts of the Insured Person,

then all loss which such spouse becomes legally obligated to pay by reason of such claim shall, for the purposes of this policy, be treated as Loss which the Insured Person becomes legally obligated to pay on account of the Claim made against the Insured Person. Such spousal Loss shall be covered under this policy only if and to the extent that such Loss would be covered if incurred by the Insured Person. Coverage shall not apply to any Claim which alleges any act or omission by an Insured Person's spouse.

## Subsidiary Company

### Newly Created/Acquired Subsidiary Company

2.17 The Insurer agrees to extend cover to include any Subsidiary Company acquired or created during the Period of Insurance by the Insured Entity. The following conditions apply to this extension:

- i. cover will only apply in respect of Wrongful Acts committed or alleged to have been committed after the date the Subsidiary Company is acquired or created by the Insured Entity;
- ii. cover will apply automatically where the fair value of the Subsidiary Company is less than twenty (20) percent of the fair value of the Insured Entity as reflected in the most recent audited consolidated financial statements or their equivalent. Otherwise, cover will only apply automatically for a period of thirty (30) days after the acquisition or creation of the Subsidiary Company unless, prior to the expiration of the thirty (30) day period, the Insurer agrees to continue cover on such terms as it may decide.

## Past Subsidiary Company

2.18 Coverage shall extend to those entities which were once a Subsidiary Company but have since ceased to be a Subsidiary Company. Coverage in this respect shall only apply to Claims arising from Wrongful Acts committed or alleged to have been committed by an Insured Person, between the date of the acquisition or creation of the Subsidiary Company by the Insured Entity and the date such Subsidiary Company ceased to be a Subsidiary Company.

# Section 3 – Exclusions

This policy does not provide an indemnity against any Loss or part thereof arising from any Claim:

## Bodily Injury

3.1 in respect of, arising from or attributable to:

- i. bodily injury, sickness, disease or death of any person, but not including mental injury, mental anguish, nervous shock or emotional distress which is unrelated to bodily injury;
- ii. destruction or loss of or damage to any tangible property, including loss of use thereof.

## Dishonesty

3.2 in respect of, arising from or attributable to any act or omission established by a judgment or other final adjudication of any court, tribunal or arbitrator to have been committed with fraudulent, dishonest or criminal intent or purpose, or knowledge that the act or omission was in breach of any statute or contract.

## Insured vs Insured

3.3 brought by, at the instigation of, or on behalf of:

- i. an Insured Person provided that this exclusion shall not apply:
  - a. to an Employment Practices Claim brought or maintained by any Insured Person or Employee; or
  - b. a Claim brought or maintained by an Insured Person for contribution or indemnity, if the Claim directly results from another Claim covered under this policy; or
  - c. any Claim brought or maintained by any former director, secretary or executive officer;
- ii. the Insured, except a Claim made on its behalf:
  - a. by the Australian Securities and Investments Commission, pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 or otherwise, or any like legislation; or
  - b. by one or more claimants, who are not Insured Person(s), who make such Claim without the co-operation or solicitation of any Insured; or
  - c. as part of a shareholder derivative action, provided that this only applies to those shareholders not also an Insured and such action is made without the co-operation or solicitation of any other Insured.

## Initial Public Offering

3.4 in respect of, arising from or attributable to the initial public offering of securities of the Insured Entity during the Period of Insurance, unless the Insurer agrees to cover the initial public offering and gives written confirmation of such agreement.

## Major Shareholders

3.5 brought by, at the instigation of, or on behalf of any individual or entity that has representation on the board of the Insured Entity and holds directly or beneficially fifteen (15) percent or more of the issued share capital or voting rights.

## Personal Profit/Advantage

- 3.6 in respect of, arising from or attributable to any Insured Person(s):
- i. having gained in fact any personal profit, advantage or remuneration to which he or she was not entitled or which was not validly approved by the Insured Entity; or
  - ii. improperly benefiting from financial transactions as a result of sensitive information or material that is not generally available to other persons engaging in such transactions.

## Pollution/Radiation/Asbestos

- 3.7 in respect of, arising from or attributable to the occurrence, threat or allegation of:
- i. seepage, pollution or contamination howsoever occurring;
  - ii. ionising radiations 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 nuclear component thereof;
  - iii. breach of any statute, regulation or by-law or any law prohibiting or controlling emissions, effluent or pollution of any kind;
  - iv. any actual or alleged losses or liabilities directly or indirectly arising out of or in connection with asbestos, or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising;
  - v. enforcement action or proceeding brought under or pursuant to any such law, statute, regulation or by-law.

## Prior & Pending

- 3.8
- i. made against the Insured prior to the Prior and Pending Date specified in the Schedule, or
  - ii. arising from or attributable to any Claim, facts or circumstances notified or disclosed to the Insurer (or any other insurer) prior to the Prior and Pending Date specified in the Schedule; or
  - iii. arising from or attributable to any Claim, facts or circumstances which could have been, but which were not notified or disclosed to the Insurer (or any other insurer) prior to the Prior and Pending Date specified in the Schedule; or
  - iv. in the case of cover for Outside Directorships, the Prior and Pending Date shall be the date specified in the Schedule or the date at which cover first commenced in respect of the Outside Directorship, whichever is the later.

## Professional Liability

- 3.9 in respect of, arising from or attributable to breach of duty in respect of any professional services provided by the Insured, other than that of a director or officer per se.

## Retroactive Date

- 3.10 in respect of, arising from or attributable to any Wrongful Act committed, attempted, or alleged to have been committed or attempted prior to the Retroactive Date specified in the Schedule.

## SEC/ERISA

- 3.11 in respect of any actual or alleged violation of the U.S. Securities Act of 1933, the U.S. Securities Exchange Act of 1934, any rules or regulations of the Securities Exchange Commission adopted thereunder, any federal, state or provincial statute in the United States of America and/or Canada regulating securities similar to the foregoing, any rules or regulations adopted pursuant thereto, or as they may be amended, or any other federal or state, provincial or common law of the United States of America and/or Canada relating to securities and/or corporate governance and disclosure.
- 3.12 in respect of any actual or alleged violation of the responsibilities, obligations or duties imposed by the U.S. Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, country, state, territory or local statutory law or common law anywhere in the world.

## Superannuation Fund Trustees

- 3.13 in respect of, arising from or in consequence of any actual or alleged violation of the responsibilities, obligations or duties owed by fiduciaries, trustees, administrators or any others charged with duties with respect to any superannuation, pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing pensions, annuities or any other form of benefits to employees of an Insured Entity or outside organisation to which the Outside Directorship cover applies.

## Terrorism

- 3.14 directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence thereto, or any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## War/Civil War

- 3.15 in respect of, arising from or attributable to war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, martial law, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or public or local authority.

## Wilful Breach

- 3.16 in respect of, arising from or attributable to:
- i. conduct involving a wilful breach of duty in relation to the Insured Entity; or
  - ii. contravention of Sections 182 or 183 of the Corporations Act 2001 (Cth).

# Section 4 – Definitions

When used in this policy:

## Associated Company means:

- 4.1 a company or legal entity in respect of which, at the inception of the Period of Insurance, the principal Insured Entity owns, directly or indirectly, greater than twenty (20) percent of the issued share capital or voting rights representing the present right to vote for the election of directors, but is not a Subsidiary Company.

## Claim means:

- 4.2 i. any writ, summons, application or other originating legal or arbitral process, cross claim, or counter claim or appeal issued against or served upon any Insured Person alleging any Wrongful Act; or  
ii. any written demand to any Insured Person alleging a Wrongful Act.

## Defence Costs means:

- 4.3 reasonable costs, charges or expenses (other than regular or overtime wages, salaries or fees of the director, secretary, executive officer or employee of the Insured Entity) incurred by the Insurer or with the Insurer's prior written consent (which shall not be unreasonably withheld) in defending or investigating Claims or proceedings or bringing or defending appeals therefrom and shall include amounts paid by the Insurer under Coverage Extension 2.5 and Claims Condition 5.1.

## Employment Practices Claim means:

- 4.4 a Claim which is brought and maintained by any past, present, future or prospective Employee of the Insured Entity against any Insured Person for any Wrongful Act in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment related misrepresentation, violation of employment discrimination laws, wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, denial of natural justice, negligent evaluation, invasion of privacy, employment related defamation, or employment related wrongful infliction of emotional distress.

For the purpose of the Employment Practices Claim Definition:

Employee means:

any person in the regular service of the Insured Entity in the ordinary course of the Insured Entity's business and whom the Insured Entity compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such services.

## Insured means:

- 4.5 the Insured Entity and the Insured Person(s).

## Insured Entity means:

4.6 the entity as specified in the Schedule and all its Subsidiary Companies.

## Insured Person(s) means:

4.7 any past, present or future natural person being a director, secretary, executive officer or any employee acting under the direction or request of a director, secretary or executive officer in the management of the Insured Entity, including any natural person who is deemed by applicable legislation or at law to be a director or officer or shadow director or shadow officer of the Insured Entity.

Insured Person(s) shall not include an external auditor, administrator (including voluntary appointed administrators), receiver, receiver and manager, official manager, liquidator, trustee or other person administering a compromise or arrangement of the Insured Entity or any employee of any such person.

## Joint Venture means:

4.8 any unincorporated enterprise undertaken jointly by the Insured Entity, with a third party(ies).

## Limit of Liability means:

4.9 the limit of liability stated in the Schedule.

## Loss means:

4.10 the total amount which any Insured Person(s) becomes legally liable to pay in respect of a Claim made against such Insured Person(s) for a Wrongful Act, including but not limited to damages, compensation, interest and costs (whether determined by judgment or by settlement) and Defence Costs. Loss does not include fines or penalties (other than civil penalties coverage provided by Coverage Extension 2.1) imposed by law, punitive, exemplary or multiple damages or matters uninsurable under the law pursuant to which this policy is construed.

However,

in respect of Exclusion 3.3 i. a. Loss shall not include:

- i. any obligation under any law or any regulation in any jurisdiction in respect of workers compensation, occupational health and safety, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever; or
- ii. forward pay, future loss, future damages or future economic relief or equivalent thereof, of the Insured Entity, or the continued employment of the claimant; or
- iii. any employment related benefits (other than back pay) attributable to the employment reinstatement, the continued employment or the commencement of employment of the claimant; or
- iv. benefits (other than salary or wages) due or to become due or the equivalent value of such benefits or any form of non-monetary relief.

## Non-Profit Organisation means:

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

## Outside Directorship means:

4.12 the position of director, secretary, executive officer or other equivalent held by an Insured Person at the specific request of the Insured Entity in any company or legal entity, which is held solely and exclusively for the purpose of representing the Insured Entity.

## Period of Insurance means:

4.13 the period of insurance cover provided by this policy as stated in the Schedule and any extension of it agreed in writing between the Insured and the Insurer, but does not include any Extended Reporting Period, whether purchased by the Insured in accordance with Coverage Extension 2.4 i. or otherwise provided according to law.

## Schedule means:

4.14 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 the Insurer.

## Subsidiary Company means:

4.15 a company or legal entity in respect of which the principal Insured Entity directly or indirectly:

- i. controls or controlled the composition of the board of directors; and/or
- ii. controls or controlled more than half of the voting power; and/or
- iii. holds or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the principal Insured Entity pursuant to the Corporations Law or the applicable Australian accounting standard.

## Terrorism means:

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

## Wrongful Act means:

4.17 any act, error, mis-statement, misleading statement, misleading conduct, omission, neglect or breach of duty made, committed, attempted or allegedly made, committed or attempted by an Insured Person, individually or otherwise, in the course of the duties of that Insured Person as director, secretary, executive officer or employee with authorised management responsibilities of the Insured Entity or any organisation to which the Outside Directorship clause applies, after the Retroactive Date, if applicable.

# Section 5 – Claims Conditions

## Advance Payment of Defence Costs

5.1 The Insurer agrees to advance the reasonable Defence Costs incurred by an Insured in the defence of a Claim as they are incurred and prior to final adjudication of the Claim.

All such payments by the Insurer shall be repaid to the Insurer by the Insured (or where more than one Insured has received such payments, by such Insureds severally and according to their respective interests) in the event and to the extent that the Insured is not entitled to payment of such Defence Costs under the terms and conditions of this policy.

5.2 Where indemnity under this policy has not been confirmed in writing by the Insurer, but the Insurer has received notification of a Wrongful Act reasonably likely to be covered by this policy, then the Insurer will advance Defence Costs to a combined maximum amount of \$100,000, however many Insured Person(s) are or may be involved, until such time as a Claim is actually made against an Insured Person in respect of the notified Wrongful Act and indemnity is confirmed in writing by the Insurer.

## Allocation

5.3 In a situation where:

- i. a Claim is made against both the Insured Entity and one or more Insured Person(s); or
- ii. part of the Loss which is the subject of a Claim against an Insured Person(s) is covered under this Policy but the remainder is not;

there is to be an allocation of all the Defence Costs incurred by the Insurer in connection with that Claim between the Insurer and the Insured Entity or the Insured Person(s), as the case may be.

Subject always to the other terms, conditions and limits of this Policy:

- a. in the event of i. above, the Insurer will pay in full any Defence Costs the incurring of which benefits only the Insured Person(s). If Defence Costs are incurred which benefit both the Insured Person(s) and the Insured Entity, the Insurer will pay only the percentage of those Defence Costs equal to the percentage which the amount of Loss for which the Insured Person(s) may be held liable represents of the total amount of Loss claimed. The Insured Entity will bear responsibility, on its own account, for the percentage of Defence Costs equal to the percentage which the amount of Loss for which the Insured Entity might be found liable, if none of the allegations of Wrongful Acts on the part of the Insured Person(s) were proven, bears to the total amount of Loss claimed;
- b. in the case of ii. above, the Insurer will pay in full Defence Costs which relate solely to that part of the Loss which is covered under this Policy. Where Defence Costs are necessarily incurred in relation to both covered and uncovered Loss, the Insurer will pay only that proportion of those Defence Costs which the covered Loss bears to the total Loss claimed against the Insured Person(s).

5.4 If the Insurer and the Insured agree on an allocation of Defence Costs, the Insurer shall, subject to Claims Condition 5.1, advance Defence Costs allocated to the covered Loss. If such parties cannot agree on allocation, the Insurer shall, subject to Claims Condition 5.1, advance Defence Costs which the Insurer believes to be covered under this policy until a different allocation is negotiated, arbitrated or judicially determined. Any such determined allocation of Defence Costs on account of a Claim shall be applied retroactively to all Defence Costs on account of such Claim, notwithstanding any prior advancement to the contrary. Any advancement of Defence Costs shall be repaid to the Insurer by the Insureds severally according to their respective interests, if and to the extent it is determined that such Defence Costs are not insured by this policy.

## Defence & Settlement

- 5.5 The Insured may, with the prior written consent of the Insurer, proceed to conduct their own defence of any Claim. In the absence of agreement to the contrary, the Insurer has the right to conduct the defence to any Claim.
- 5.6 The Insured shall not admit liability for or settle any Claim without the consent of the Insurer or incur any costs or expenses without the consent of the Insurer. Such consent shall not be unreasonably withheld.
- 5.7 The Insured shall assert all appropriate defences and cross claims for contribution, indemnity or damages and take all reasonable steps in defence of the Claim.
- 5.8 The Insurer shall not settle any Claim against any Insured Person without the consent of the relevant Insured Person. The Insurer shall retain the right to actively participate in the defence and settlement of any Claim under this policy.
- 5.9 If the Insurer and the Insured cannot agree upon an allocation and/or a settlement, then the matter will be determined by advice of Senior Counsel (to be mutually agreed by the Insured Person and the Insurer and to be paid for by the Insurer, which shall be in addition to the Limit of Liability).

## Payments in Respect to Goods & Services Tax

- 5.10 When the Insurer makes a payment to the Insured, or on behalf of the Insured, under this policy for the acquisition of goods, services or other supplies, the Insurer will reduce the amount of the payment by the amount of any input tax credit that Insured is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.
- 5.11 When the Insurer makes a payment to the Insured, or on behalf of the Insured, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, the Insurer will reduce the amount of the payment by the amount of any input tax credit that Insured is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

## Reporting & Notice

- 5.12 The Insured shall, as a condition precedent to their right to indemnify it under this policy, give to the Insurer written notice as soon as practicable but not later than the expiry of the Period of Insurance of any Claim.
- 5.13 All notices from the Insured to the Insurer under any provisions of this policy shall be put in writing and given by courier, certified mail or fax properly addressed to the appropriate party. Notice of any Claim or circumstance under this policy shall be given to the appropriate Zurich branch office, addressed as follows:  
  
Zurich Australian Insurance Limited  
Attention: Specialties, Claims Manager
- 5.14 All other notices shall be given to the Specialties underwriter at the appropriate Zurich branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

## Subrogation

- 5.15 If any payment is made under this policy in respect of a Claim, the Insurer shall be subrogated to all rights of recovery existing to any Insured, and be entitled to any money received pursuant to such rights and to prosecute such rights in the name of the Insured, who shall in addition render all reasonable assistance and co-operation to the Insurer.

# Section 6 – General Conditions

## Assignment

6.1 This policy and any rights thereunder shall not be assigned without the prior written consent of the Insurer.

## Authorisation

6.2 The Insured authorises the principal Insured Entity to act on behalf of all persons and entities comprising the Insured with respect to the giving and receiving of notices of Claim or cancellation or any other notice provided for in this policy, the payment and return of premium and the negotiation, agreement to and acceptance of endorsements.

## Cancellation/Termination

- 6.3
- i. The Insured may cancel this policy by giving notice in writing to the Insurer at any time;
  - ii. The Insurer may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect thirty (30) days from the time of receipt of notification by the Insured Person(s);
  - iii. After cancellation by the Insured a refund of premium will be allowed pro-rata of seventy (70) percent of the premium for the unexpired Period of Insurance;
  - iv. After cancellation by the Insurer a refund of premium will be allowed pro-rata for the unexpired Period of Insurance.

## Confidentiality

- 6.4 The existence and terms of this policy shall be confidential as between the Insured and the Insurer and shall not be published, disclosed or otherwise communicated except where:
- i. the law requires disclosure in the financial statements or annual reports of payment by the Insured Entity of a premium in respect of a contract insuring persons against a liability; or
  - ii. the Insurer consents in writing to disclosure of the existence and/or terms of this policy.

## Descriptive Titles

6.5 The titles of paragraphs in this policy are included for descriptive purposes only and do not form part of this policy for the purposes of construction or interpretation.

## Goods & Services Tax

- 6.6 The policy has provision for payment of Goods & Services Tax (GST) by the:
- i. Insured in relation to the premium payment;
  - ii. Insurer in relation to claim payments depending on the type of claim. The GST component of a claim will be settled according to the Insured Input Tax Credit (ITC) entitlement.

The Insured must advise the Insurer their correct ITC percentage. Any GST liability arising from the incorrect advice is payable by the Insured.

## Limit of Liability & Excess

- 6.7 The total aggregate limit of the Insurer's liability to the Insured (for all Loss including Defence Costs) in respect of all Claims made or deemed to be made during any one Period of Insurance against all Insured Person(s) shall not exceed the aggregate Limit of Liability as specified in the Schedule.
- 6.8 The total aggregate limit of the Insurer's liability for all Claims made by the Insured under this policy or any other directors and officers liability or company reimbursement policy, including Outside Directorship coverage, issued by the Zurich Group of insurance companies in respect of the same Period of Insurance, shall not exceed the aggregate limit for all Claims set out in the schedule of this policy.
- 6.9 The Insurer's liability hereunder shall apply only to that part of Loss (including Defence Costs) in respect of each Claim which exceeds any applicable excess amount specified in the Schedule and such excess amount shall be borne by the Insured uninsured and at the Insured's own risk.
- 6.10 For the purpose of this policy, all Claims arising out of one Wrongful Act and/or causally inter-related Wrongful Acts of any Insured Person(s) shall be deemed to be one Claim made in the Period of Insurance in which the Claim is first made or deemed to be made against any Insured Person(s).
- 6.11 For the purposes of Coverage Extension 2.4 and any other extensions of cover provided by this policy, such additional cover shall form part of and not be in addition to the immediately preceding Period of Insurance. If this period is less than or greater than one year, then the Limit of Liability shall be the Insurer's maximum limit of liability under this policy for the entire period.

## Other Insurance

- 6.12 Upon giving notice pursuant to Claims Conditions 5.12 and 5.13 the Insured shall at the time inform the Insurer of any other insurances or indemnities pursuant to which the Insured may be entitled to any benefit in respect of that Claim.
- 6.13 In relation to Coverage Extensions 2.10, 2.11, 2.17 and/or 2.18 afforded by this policy, such coverage shall be specifically excess of any other insurance specified in the proposal form for the proposed outside entity or past subsidiary company, or any other indemnity available from the outside entity or past subsidiary company to such Insured Person, by reason of serving in such Outside Directorship, past Outside Directorship, Subsidiary Company or past Subsidiary Company.

## Privacy Statement

- 6.14 Privacy legislation requires Zurich Australian Insurance Limited to make the following disclosures before collecting personal information from any Insured Person(s):
- i. Zurich requires personal information about the Insured Person(s) to assess the proposal for directors and officers liability insurance and to administer the policy;
  - ii. Where relevant for this purpose, we may disclose personal information (other than sensitive information such as health information) to the Insured's adviser;
  - iii. We will also, where relevant, disclose personal information including sensitive information to our service providers (including loss adjuster, administrators, and reinsurers) and to our business partners for this purpose. By submitting the proposal, the Insured Person(s) consent to Zurich and those organisations, collecting and disclosing sensitive information about them;
  - iv. A list of the type of service providers and business partners Zurich commonly use is available on request, or on our website – go to [www.zurich.com.au](http://www.zurich.com.au) and click on the Privacy link on our home page;

- v. If the Insured Person(s) do not provide the requested information, the proposal may not be accepted and Zurich may not be able to administer the policy or the Insured Person(s) may breach their duty of disclosure the consequences for which are set out in the duty of disclosure notice;
- vi. Zurich may also disclose personal information about Insured Person(s) where we are required or permitted to do so by law;
- vii. In most cases, upon request, Zurich will give an Insured Person access to the personal information we hold about them. In some circumstances, we may charge a fee for giving you access which will vary but will be based on our costs;
- viii. An Insured Person may contact Zurich by telephone on 132 687, e-mail at [Privacy.Officer@zurich.com.au](mailto:Privacy.Officer@zurich.com.au) or in writing to 'The Privacy Officer' at Zurich Australian Insurance Limited, PO Box 677, North Sydney, 2059. Please provide details of the policy number/s where known.

## Severability & Non-Imputation

- 6.15 Where this policy insures more than one party, the application for insurance is construed as a separate application by each Insured. When determining whether coverage is available under this policy:
- i. any failure by an Insured to comply with the duty of disclosure shall not be imputed to any other Insured, where that Insured is innocent of and had no prior knowledge of the failure; and
  - ii. for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an Insured shall be imputed to any other Insured.

## Singular & Plural

- 6.16 Except where the context otherwise requires, a reference to the singular includes the plural and vice versa.

## Valuation & Foreign Currency

- 6.17 All premiums, limits, retention, Loss and other amounts under this policy are expressed and payable in Australian 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 Australian dollars, payment under this Policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars in the Australian Financial 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.

## Worldwide Territorial/Jurisdictional Limits

- 6.18 This policy shall apply to:
- i. Wrongful Acts committed, attempted or alleged to have been committed or attempted, anywhere in the world;
  - ii. Claims made and actions brought anywhere in the world.
- 6.19 In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that this policy shall be governed by the law applicable in the Commonwealth of Australia and the relevant State in which this policy is issued by the Insurer.



**ZURICH**

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