

# Educators Liability Insurance

Policy Wording



## **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 of insurance; 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 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 of insurance, 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 as soon as reasonably practicable after the insured becomes aware of the occurrence or fact and before this policy expires, the insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured prior to the end of the period of insurance.

If the insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the insured will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Zurich 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 Zurich until after the policy has expired, Zurich 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.

# Contents

## Welcome to Zurich

- About Zurich ..... 3
- Duty of Disclosure..... 3
- Our contract with you ..... 3
- Privacy..... 3
- General Insurance Code of Practice ..... 4
- Complaints and Disputes Resolution process..... 4

## Educators Liability Insurance – Policy Wording

- Introduction ..... 5
- Our Agreement..... 5
- 1. General Definitions ..... 5
- 2. General Extensions of Cover..... 15
- 3. General Exclusions ..... 20
- 4. General Conditions..... 24
- Section 1 – Insured Persons Liability ..... 32
- Introduction ..... 32
- 1. Insuring Clauses..... 32
- 2. Definitions..... 32
- 3. Extensions of Cover ..... 34
- Section 2 – Institution Liability..... 37
- Introduction ..... 37
- 1. Insuring Clause ..... 37
- 2. Definitions..... 37
- 3. Extensions of Cover ..... 37
- 4. Exclusions..... 38
- Section 3 – Employment Practices Liability..... 39
- Introduction ..... 39
- 1. Insuring Clause ..... 39
- 2. Definitions..... 39
- 3. Extension of Cover..... 39
- 4. Exclusions..... 40
- Section 4 – Professional Liability ..... 41
- Introduction ..... 41
- 1. Insuring Clause ..... 41
- 2. Definitions..... 41
- 3. Extensions of Cover ..... 41
- 4. Optional Extension of Cover..... 42
- 5. Exclusions..... 43
- Section 5 – Superannuation Trustee’s Liability ..... 44
- Introduction ..... 44
- 1. Insuring Clause ..... 44
- 2. Exclusions..... 44

Section 6 – Internet Liability.....	45
Introduction .....	45
1. Insuring Clause.....	45
2. Definitions.....	45
3. Exclusions.....	46
Section 7 – Supplementary Legal Expenses .....	47
Introduction .....	47
1. Insuring Clauses.....	47
2. Definitions.....	47
3. Exclusions.....	48
4. Special Conditions.....	49
Section 8 – Statutory Liability .....	50
Introduction .....	50
1. Insuring Clause .....	50
2. Definitions.....	50
3. Extensions of Cover .....	51
4. Exclusions.....	51
5. Special Conditions.....	52
Section 9 – Commercial Crime.....	53
Introduction .....	53
1. Insuring Clause .....	53
2. Definitions.....	53
3. Extensions of Cover .....	56
4. Exclusions.....	58
5. Special Conditions.....	59

# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

## If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Our contract with you

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

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

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

## Privacy

Zurich is bound by the Privacy Act 1988 (Cth). We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about you ('your details') to assess applications, administer policies, contact you, enhance our products and services and manage claims ('Purposes'). If you do not provide your information, we may not be able to do those things. By providing us, our representatives or your intermediary with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including your sensitive information, to relevant third parties including your intermediary, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, our banking gateway providers and credit card transactions processors, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at [www.zurich.com.au](http://www.zurich.com.au) or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of your details are likely to be located. It also sets out how we handle complaints and how you can access or correct your details or make a complaint.

## General Insurance Code of Practice

We are signatories to the General Insurance Code of Practice (the Code) and support the Code.

The objectives of the Code are:

- to commit us to high standards of service;
- to promote better, more informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes you make about us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and your rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting us.

## Complaints and Disputes Resolution process

If you have a complaint about an insurance product we have issued or the service you have received from us, please contact your intermediary to initiate your complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687. We will acknowledge receipt of your complaint within 24 hours or as soon as practicable.

If you are not satisfied with our initial response, you may access our internal dispute resolution process. Please refer to the general insurance fact sheet available on our website for details of our internal dispute resolution process.

We expect that our internal dispute resolution process will deal fairly and promptly with your complaint, however, you may take your complaint to the Australian Financial Complaints Authority (AFCA) at any time.

AFCA is an independent external dispute resolution scheme. We are a member of this scheme and we agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to you.

Their contact details are:

Website: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Freecall: 1800 931 678

In writing to: The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

# Educators Liability Insurance – Policy Wording

## Introduction

The policy cover is made up by various Sections of cover. Sections 1 – 6 are included in the policy cover automatically, Sections 7, 8 and 9 are optional. The Sections are:

- Section 1 – Insured Persons Liability
- Section 2 – Institution Liability
- Section 3 – Employment Practices Liability
- Section 4 – Professional Liability
- Section 5 – Superannuation Trustee's Liability
- Section 6 – Internet Liability
- Section 7 – Supplementary Legal Expenses
- Section 8 – Statutory Liability
- Section 9 – Commercial Crime

Sections 7, 8 and 9 form part of your policy only when specified as included in the *schedule*.

Within the overall policy, we have included General Definitions, General Extensions of Cover, General Exclusions and General Conditions which are applicable to all *cover sections*. Within each *cover section*, we have included additional Definitions, Extensions of Cover, Exclusions and Special Conditions that are applicable only for that individual *cover section*.

## Our Agreement

Subject to payment of the premium set out in the *schedule*, we agree to provide the cover shown within the *schedule* for the *cover sections* taken on the terms, conditions and limitations set out in this policy, including any automatic and operative Extensions of Cover and attaching endorsements.

### 1. General Definitions

In this policy the following General Definitions apply. If a word or phrase is also defined in a *cover section*, then for the purposes of that *cover section* it has the meaning given in that *cover section*.

#### 1.1 Act

*Act* means:

- 1.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of a Parliament of a State or Territory of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; or
- 1.1.2 any Act of the Parliament of New Zealand, including any subordinate or delegated legislation made under those Acts; and
- 1.1.3 any amendment, consolidation or re-enactment of any of the above Acts or subordinate or delegated legislation.

#### 1.2 Act of terrorism

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



### 1.3 Bodily injury

*bodily injury* means bodily injury, sickness, disease or death of any person and includes mental or emotional distress.

### 1.4 Change in control

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

1.4.1 any person, entity or group:

- (a) acquires more than 50% of the *policyholder's* share capital;
- (b) acquires the majority of the voting rights in the *policyholder*;
- (c) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
- (d) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
- (e) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or

1.4.2 a *trustee* in bankruptcy, receiver, liquidator, conservator, rehabilitator, administrator or deed administrator (or similar official or person) is appointed for the *policyholder*.

### 1.5 Claim

*claim* means:

1.5.1 a written demand for monetary damages or non-monetary relief;

1.5.2 a civil proceeding, suit or counter-claim commenced by the service of a statement of claim, summons or similar pleading;

1.5.3 a criminal proceeding;

1.5.4 a written notice of an arbitration, mediation proceeding or alternative dispute resolution proceeding; and

1.5.5 any written request to waive or extend the operation of any statute of limitations or contractual time-bar; made against the *insured*.

The term '*claim*' includes:

- (i) for the purposes of Section 1 and 2, a *securities claim*;
- (ii) for the purposes of Section 1, an *extradition claim*;
- (iii) for the purposes of Sections 1 and 2, an *environmental mismanagement claim*; or
- (iv) for the purposes of Section 3, an *employment practices claim*.

### 1.6 Clean up costs

*clean up costs* means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of *pollutants*.

### 1.7 Combined limit of liability

*combined limit of liability* means the amount specified in the *schedule* as the combined limit of liability for *cover sections* 1, 2, 3, 4, 5 and 6.

1.18.4 results in *financial loss* incurred by *insured persons* for which the *institution* does not indemnify the *insured persons* either because the *institution* is neither permitted nor required to grant such indemnification or because of *financial impairment*.



## 1.8 Consumer protection act

*consumer protection act* means:

1.8.1 any of the following

- (a) Fair Trading Act 1985 (Vic);
- (b) Fair Trading Act 1987 (NSW);
- (c) Fair Trading Act 1987 (SA);
- (d) Fair Trading Act 1987 (WA);
- (e) Fair Trading Act 1989 (Qld);
- (f) Fair Trading Act 1990 (Tas);
- (g) Fair Trading Act 1992 (ACT);
- (h) Consumer Affairs and Trading Act 1996 (NT);
- (i) Trade Practices Act 1974 (Cth);
- (j) Competition and Consumer Act 2010 (Cth); and

1.8.2 any amendment, consolidation or re-enactment of any of those Acts.

## 1.9 Cover section

*cover section* means the individual cover section that attaches to and forms part of the policy when shown in the *schedule*.

## 1.10 Crime claim

*crime claim* means a written demand by or on behalf of the *institution* to us for payment of *crime loss* under Section 9 of the policy.

## 1.11 Date of continuous cover

*date of continuous cover* means for the *insured persons* and for the *institution* under Sections 1, 2, 3, 4, 5, 6 and 8 the date specified in the *schedule*.

## 1.12 Deductible

*deductible* means the amount stated in the *schedule* that is the responsibility of the *policyholder*.

## 1.13 Defence costs

*defence costs* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *institution*, cost of their time or the costs or overhead of the *institution*), incurred in the *investigation*, defence, settlement or appeal from any *claim* made or brought against an *insured*.

*Defence costs* includes the reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by us on behalf of the *insureds* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

*Defence costs* does not include *investigation costs* or *representation costs*.

## 1.14 Director or officer

*director or officer* means:

- 1.14.1 any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member, *trustee* or governor of the *institution* and includes any equivalent position in any other country;
- 1.14.2 any natural person who is a past, present or future *shadow director* of the *institution*;

- 1.14.3 any *director or officer* defined in 1.14.1 or 1.14.2 above, who is or was or becomes a member of the *institution's* internal audit committee, or any other internal committee of the *institution*; and
- 1.14.4 any *employee* of the *institution* who is a past, present or future corporate general counsel (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *institution*.

### 1.15 Employee

*employee* means a natural person, including a past, present or future employee, while in the regular service or seasonal or casual or temporary service or under a contract of service or apprenticeship of the *institution* in the ordinary course of the *institution's* business and whom the *institution* compensates (if at all) by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service.

### 1.16 Employment practices claim

*employment practices claim* means:

- 1.16.1 a written demand for monetary damages or non-monetary relief;
- 1.16.2 a civil proceeding, suit or counter-claim commenced by the service of a statement of claim, summons or similar pleading;
- 1.16.3 a criminal proceeding;
- 1.16.4 a written notice of an arbitration, mediation proceeding or alternative dispute resolution proceeding; and
- 1.16.5 any written request to waive or extend the operation of any statute of limitations or contractual time-bar;

which alleges any actual, alleged or attempted act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of:

- (a) the *institution*; or
  - (b) for the purpose of Section 1 Extension of Cover 3.4 'Employment practices claims', an *outside entity*, occurring before or during the *period of insurance*; and
- 1.16.6 an employment related proceeding, *investigation* or charge brought by or before the Australian Human Rights Commission or any Australian State or Territory based equivalent (or similar body in any foreign jurisdiction).

### 1.17 Environmental event

*environmental event* means:

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

### 1.18 Environmental mismanagement claim

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

- 1.18.1 is a *claim* or *securities claim* against the *institution*;
- 1.18.2 is an *employment practices claim* against an *insured person* or the *institution*, including without limitation any such *claim* for retaliatory treatment;
- 1.18.3 is against an *insured person* for *wrongful acts* from an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes; or

1.18.4 results in *financial loss* incurred by *insured persons* for which the *institution* does not indemnify the *insured persons* either because the *institution* is neither permitted nor required to grant such indemnification or because of *financial impairment*.

### 1.19 Extended reporting period

*extended reporting period* means the relevant period of cover arising or offered under General Extension of Cover 2.6 'Extended reporting period', General Extension of Cover 2.10 'Retired directors and officers' and/or General Extension of Cover 2.12 'Runoff cover for past subsidiaries'.

### 1.20 Financial impairment

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

- 1.20.1 the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, *trustee*, administrator, deed administrator or similar official to take control of, supervise, manage or liquidate the *institution*;
- 1.20.2 the appointment by or on behalf of the *institution* of administrators; or
- 1.20.3 the *institution* being in receivership or liquidation.

### 1.21 Financial institution

*financial institution* means any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company (other than a captive owned by the *institution*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

### 1.22 Financial loss

*financial loss* means:

- 1.22.1 damages, judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) that any *insured* becomes legally liable to pay;
- 1.22.2 sums payable for any settlement to which we have consented;
- 1.22.3 *defence costs*;
- 1.22.4 under Sections 1 and 4 only, *investigation costs*;
- 1.22.5 under Section 2 only, *representation costs*;
- 1.22.6 under Section 1 only, *extradition costs*;
- 1.22.7 under Section 1 only, *prosecution costs*;
- 1.22.8 under General Extension 2.3 'Crisis containment' only, *public relation expenses*;
- 1.22.9 under Section 1 only, *civil or bail bond expenses*;
- 1.22.10 under Section 1 only, *deprivation of assets expenses*;
- 1.22.11 fines and pecuniary penalties which an *insured* is legally obligated to pay, provided we are not legally prohibited from paying such fine or penalty and excepting fines and pecuniary penalties referred to in paragraph (iii) below of this definition of *financial loss*; and
- 1.22.12 punitive, exemplary, aggravated and multiple damages unless uninsurable by law.

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

- (i) taxes (other than those covered by Section 1 – Extension of Cover 3.12 ‘Tax liability’ and General Condition 4.10 ‘Goods and Services Tax’);
- (ii) social security contributions;
- (iii) fines and pecuniary penalties imposed by law for a deliberate or intentional breach of law or any matter deemed uninsurable or prohibited under the law applicable to this policy;
- (iv) damages that are uninsurable by law;
- (v) *clean up costs*; or
- (vi) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Australian Prudential Regulation Authority or similar.

The question of whether any *financial loss* is uninsurable by law pursuant to clauses 1.22.11, 1.22.12, (iii) and (iv) above will be governed by such applicable law that most favours coverage for such *financial loss*, provided that such applicable law has a substantial connection or relationship to the relevant *insured* or to the *claim* giving rise to such liability.

### 1.23 Greenhouse gases

*greenhouse gases* means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>), or any other emission or substance defined by applicable law as a Greenhouse gas.

### 1.24 Insolvency

*insolvency* means in relation to any *insured*:

- 1.24.1 being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- 1.24.2 having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- 1.24.3 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;
- 1.24.4 being otherwise unable to pay any debts as and when they fall due; or
- 1.24.5 having anything with the same or similar effect happen under the laws of any jurisdiction outside of Australia.

### 1.25 Institution

*institution* means:

- 1.25.1 the *policyholder*;
- 1.25.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms, conditions and limitations of the policy);
- 1.25.3 any foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*;
- 1.25.4 in the event a bankruptcy proceeding is instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status in any applicable jurisdiction), if any;
- 1.25.5 that part of any church or religious order from which the *institution* or the *insured persons* gain some benefit and have an association, and any body corporate, association, group or committee existing for the benefit of the *institution* or the *insured persons*, including but not limited to, parents and friends associations, foundations, old boys and girls associations, alumni associations, parent groups, mother groups, father groups, learning or tutorial groups, music or other cultural committees and support groups, sporting committees and support groups, staff social clubs, sporting clubs and sports management committees, whether they are incorporated or unincorporated; and
- 1.25.6 any contract teaching company with which the *institution* has contracted, but only in respect of liability arising from such services performed while acting on behalf of the *institution*.

## 1.26 Insured

*insured* means:

- 1.26.1 any *insured person(s)*;
- 1.26.2 the *institution*; and
- 1.26.3 in Section 5, any *trustee*.

## 1.27 Insured person(s)

*insured person(s)* means any natural person who is:

- 1.27.1 a *director or officer*;
- 1.27.2 an *outside entity executive*;
- 1.27.3 an *employee* of the *institution* while acting in a managerial or supervisory capacity within the *institution*;
- 1.27.4 an *employee* of the *institution*, other than a *director or officer*, in relation to any *claim*, but only if and as long as such *claim* is also made and continuously maintained against a *director or officer*.

The term *insured person* includes any natural person who is a past, present or future:

- 1.27.5 dean, personnel director, risk manager, principal, bursar, chaplain, guidance counsellor, teacher, student, contractor, supervisor, coach, assistant or trainer of the *institution*;
- 1.27.6 contract teacher with whom the *institution* has contracted, but only in respect of liability arising from services performed while acting for and on behalf of the *institution*;
- 1.27.7 educational, artistic or sporting consultant with whom the *institution* has contracted, but only in respect of liability arising from services performed while acting for and on behalf of the *institution*;
- 1.27.8 committee member, council member, board member or a representative of any church or religious order affiliated to the *institution* (whether or not salaried);
- 1.27.9 volunteer of the *institution*;
- 1.27.10 or any other person for whose acts the *institution* is legally responsible while acting on behalf of the *institution*;
- 1.27.11 for the purpose of General Extension of Cover 2.8 'Marital estates' only and no other, any lawful spouse or domestic partner of a person as defined in 1.27.1 to 1.27.10 above; and
- 1.27.12 for the purpose of General Extension of Cover 2.5 'Estates, heirs, legal representatives' only and no other, any estate, heir or legal representative of a person as defined in 1.27.1 to 1.27.10 above.

*Insured person(s)* does 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 *institution* or any *employee* of any such person.

## 1.28 Investigation

*investigation* means a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by an *official body*.

## 1.29 Limit of liability

*limit of liability* means the amount specified in the *schedule* for the applicable *cover section*.

### 1.30 Loss

*loss* means:

1.30.1 *financial loss*;

1.30.2 under Section 7, *supplementary legal expenses loss*;

1.30.3 under Section 8, *statutory liability loss*;

1.30.4 under Section 9, *crime loss*; and

1.30.5 any costs, expenses or sum payable under any General Extension of Cover or Extension of Cover.

### 1.31 Non-profit organisation

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

### 1.32 Official body

*official body* means any regulator or government, disciplinary body or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the *institution* or *outside entity* or the conduct of an *insured person*.

For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange.

### 1.33 Outside entity

*outside entity* means:

1.33.1 any *non-profit organisation*; or

1.33.2 any for-profit entity;

but excluding any *institution* and any:

(i) *financial institution*;

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

(iii) other entity that had negative net assets or negative net worth at the inception date of this policy;

unless such *financial institution* or entity is specifically listed as an *outside entity* in an endorsement attached to this policy.

### 1.34 Outside entity executive

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

1.34.1 did or will serve or act; or

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

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

### 1.35 Period of insurance

*period of insurance* means the period of time specified in the *schedule* to this policy including any Extension of Cover or General Extension of Cover thereto agreed in writing by us.

### 1.36 Policyholder

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

### 1.37 Pollutants

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

### 1.38 Prior known fact

*prior known fact* means any fact or matter which:

1.38.1 an *insured person* first became aware of prior to the commencement of the *period of insurance*; and

1.38.2 an *insured* knew, or a reasonable *insured* would have considered prior to the commencement of the *period of insurance*, might result in an allegation against an *insured* of a *wrongful act*.

### 1.39 Property damage

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

### 1.40 Public relations expenses

*public relations expenses* means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an *insured person* or the *institution* may engage with our prior written consent, such consent not to be unreasonably withheld or delayed, to prevent or limit adverse effects or negative publicity in respect of a *claim* or *investigation*.

### 1.41 Regulatory authority

*regulatory authority* means a *third party* appointed, constituted or acting under a delegation pursuant to any *Act* for the purposes of enforcement of such *Act* or another *Act*, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

### 1.42 Schedule

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

### 1.43 Securities

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

### 1.44 Securities claim

*securities claim* means a *claim* that:

1.44.1 is brought by a past or present holder of *securities* of the *institution*:

1.44.1.1 in his, her or its capacity as a security holder of such *institution*, with respect to his, her or its interest in *securities* issued by the *institution*; or

1.44.1.2 on behalf of or in the name of the *institution* (in the form of a shareholder 'derivative action' or its equivalent) against an *insured*; or

1.44.2 is brought by any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities* and alleges that the *institution* and/or any of its *insured persons* violated a government, federal, state, provincial, local or foreign securities law or a rule or regulation promulgated under such securities law, including but not limited to the Corporations Act 2001 (Cth), Securities Act 1978 (NZ), Securities Markets Act 1998 (NZ), Financial Services and Markets Act 2000 (UK), United States Securities Act of 1933 (as amended) and the United States Securities Exchange Act of 1934 (as amended), but only in connection with the purchase, sale or offer to purchase or sell *securities* issued by the *institution*.



#### 1.45 Sub-limit

*sub-limit* means a limit of liability under this policy, which is within, and forms part of, and is not in addition to, the applicable *limit of liability* or the *combined limit of liability*.

#### 1.46 Submission

*submission* means:

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

#### 1.47 Subsidiary

*subsidiary* means any entity in which the *policyholder*:

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

and in any event includes any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the applicable Australian accounting standard.

#### 1.48 Third party

*third party* means any natural person or entity other than an *insured*.

#### 1.49 Trust

*trust* means a trust in respect of a superannuation or pension fund, administered by the *trustee* for the benefit of the *employees* of the *institution*. It does not mean any industry fund, any public offer fund or any self-managed superannuation fund.

#### 1.50 Trustee

*trustee* means:

- 1.50.1 any natural person who was or now is or may hereafter become a *trustee* of a *trust*;
- 1.50.2 any body corporate (including any past, present or future director, officer, secretary or *employee* of such body corporate), who was or now is or may hereafter become a *trustee* of the *trust*;
- 1.50.3 any member of any policy or management committee which has been established pursuant to the governing rules of a *trust*; or
- 1.50.4 any natural person who by virtue of any applicable legislation or law is deemed to be a *trustee* of a *trust*.

#### 1.51 Trustee responsibility breach

*trustee responsibility breach* means any actual, alleged or attempted act or omission, including but not limited to any breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation, committed by a *trustee* in their or its capacity as a *trustee* but only in respect of the administration of the *trust*.

## 1.52 Wrongful act

*wrongful act* means:

- 1.52.1 for the purposes of Sections 1 and 7, any actual, alleged or attempted act or omission, including but not limited to, a shareholder 'derivative action', breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful act or omission committed or attempted by or allegedly committed or attempted by:
- (i) any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *institution* or any matter claimed against such *insured person* solely by reason of his/her status as such; or
  - (ii) any *insured person* whilst acting in the capacity as an *outside entity executive*;
- 1.52.2 for the purposes of Section 2, any actual, alleged or attempted act or omission, including but not limited to, a shareholder 'derivative action', any breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful act or omission committed or attempted by or allegedly committed or attempted by the *institution*, other than any *employment practices claim*, *electronic publishing claim* or *wrongful breach*;
- 1.52.3 for the purposes of Section 3, any *employment practices claim*;
- 1.52.4 for the purposes of Section 5, any *trustee responsibility breach*.
- 1.52.5 for the purposes of Section 6, any *electronic publishing claim*; and
- 1.52.6 for the purposes of Section 8, any *wrongful breach*.

## 1.53 Wrongful breach

*wrongful breach* means any actual, alleged or attempted act, error or omission which occurs after the *date of continuous cover*, and notified to us during the *period of insurance* or the *extended reporting period* (if applicable) whereby:

- 1.53.1 the *insured* contravenes an *Act* or is involved in the contravention of an *Act*; or
- 1.53.2 the *insured* commits an offence pursuant to an *Act*.

## 2. General Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below to all *cover sections*. Each Extension of Cover is subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase an applicable *limit of liability* or *combined limit of liability*, unless expressly stated otherwise.

### 2.1 Advancement of defence costs and other costs and expenses (including emergencies)

We agree, in respect of a *claim* or *investigation* and prior to final adjudication of the *claim* or finalisation of the *investigation*, to advance the payments in respect of the following types of costs and expenses, as they are incurred by an *insured*:

- 2.1.1 *defence costs*;
- 2.1.2 *investigation costs*;
- 2.1.3 *representation costs*;
- 2.1.4 *prosecution costs*;
- 2.1.5 *civil or bail bond expenses*;
- 2.1.6 *public relations expenses*;
- 2.1.7 *extradition costs*; and
- 2.1.8 fees, expenses and other disbursements described in part 2.3.3 of the definition of fees and expenses in Section 7.

We will not rely on General Exclusion 3.3 'Conduct' or Exclusion 4.7 'Wilful and intentional breaches' under Section 8, to deny indemnity or to refuse to advance the costs and expenses described in 2.1.1 to 2.1.8 above under this Extension of Cover until the conduct in question has been finally established, by court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency our written consent cannot be reasonably obtained by the applicable *insured* before any of such costs and expenses are incurred, the *insureds* have the right to incur such amounts without that consent for a period of 30 days immediately following the date on which the relevant costs or expenses were first incurred.

In the event of an emergency referred to above, the *sub-limit* for costs so incurred is 10% of the *combined limit of liability* for all *claims* by all *insureds* in the aggregate.

Any advance payments to an *insured* that have been made by us must be repaid by that *insured* in the event that the *insured* is not entitled under this policy to the payment of such costs and expenses.

## 2.2 Continuous cover

We will pay *financial loss, supplementary legal expenses loss or statutory liability loss* arising from any *claim* first made against an *insured* or *investigation* into the affairs of the *insured* during the *period of insurance* arising from a *prior known fact*.

Provided that:

- 2.2.1 the *insured* has maintained without interruption a policy that insured against the *wrongful act* or *civil liability* giving rise to such *claim*, from the *date of continuous cover* to the present date;
- 2.2.2 neither the *claim* nor the *prior known fact* has previously been notified to us or at any time to any insurer under any policy; and
- 2.2.3 cover under this Extension of Cover will be pursuant to the terms, conditions and limitations of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

## 2.3 Crisis containment

We will pay *public relations expenses* to or on behalf of the *institution* or an *insured person* for the sole purpose of protecting their reputation, which has been brought to question as a direct result of:

- 2.3.1 any *claim* against the *institution* first made during the *period of insurance* or the *extended reporting period* (if applicable);
- 2.3.2 any *investigation* for which the *institution* is entitled to cover for *representation costs*;
- 2.3.3 any *claim* against an *insured person* first made during the *period of insurance* or the *extended reporting period* (if applicable);
- 2.3.4 any *investigation* for which the *insured person* is entitled to cover for *investigation costs*.

However:

- (i) the *institution* must notify us within 30 days of first becoming aware the reputation of the parties noted in 2.3.1 to 2.3.4 are being brought into question and provide to the best of its knowledge at that time full written details outlining the circumstances surrounding the event; and
- (ii) we must have given prior written consent, such consent not to be unreasonably withheld or delayed, to retain the services of such public relations firm or consultant, crisis management firm or law firm; and
- (iii) the *sub-limit* for this Extension of Cover is \$100,000 or the amount specified in the *schedule* for all *public relations expenses* payable and in the aggregate for any one *period of insurance*.

## 2.4 Environmental mismanagement coverage

We will pay *financial loss, supplementary legal expense loss or statutory liability loss* arising from any *claim* made:

2.4.1 against any *insured person*; and

2.4.2 against the *institution*,

that is an *environmental mismanagement claim*.

The *sub-limit* for this Extension of Cover in respect to 2.4.2 above, is \$500,000 in the aggregate any one *period of insurance* or the amount specified in the *schedule*. This aggregate *sub-limit* applies across all applicable Sections other than Section 8, where the *limit of liability* for that *cover section* will apply.

## 2.5 Estates, heirs, legal representatives

We will pay *financial loss, supplementary legal expenses loss or statutory liability loss* arising from any *claim* made against the estates, heirs or legal representatives of any *insured person* with respect to *wrongful acts* by such *insured person* committed or *civil liability* incurred prior to the death, incapacity, *insolvency* or bankruptcy of the *insured person*, provided that such estates, heirs or legal representatives are subject to the terms, conditions and limitations of this policy in so far as they can apply.

This Extension of Cover does not cover any *claim* arising out of any act or omission of the estates, heirs or legal representatives.

## 2.6 Extended reporting period

2.6.1 In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* automatically has the right, without payment of any additional premium, to a single coverage extension under this policy for a period of 90 days after the expiry of the *period of insurance*, in relation to:

- (a) any *claim* made against any *insured* during such 90 day period; and
- (b) any *investigations* where the legal requirement on the *insured person* to attend first arises during such 90 day period; and
- (c) any *investigations* where the legal requirement on the *institution* to attend first arises during such 90 day period,

but only with respect to any *wrongful act* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

2.6.2 In the event of a non-renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* has the right to purchase a single coverage extension under this policy for a period of:

- (a) 12 months;
- (b) 24 months;
- (c) 72 months; or
- (d) 84 months,

after the expiry date of the *period of insurance* for:

- (i) any *claim* made against any *insured* during the selected *extended reporting period*; or
- (ii) any *investigation* where the legal requirement on the *insured person* to attend first arises during such selected *extended reporting period*; or
- (iii) any *investigation* where the legal requirement on the *institution* to attend first arises during such selected *extended reporting period*,

but only with respect to any *wrongful act* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

General Extension of Cover 2.6.2 'Extended reporting period' is subject to such terms, conditions and limitations as we may reasonably impose. Further and subject to General Extension of Cover 2.6.3 'Extended reporting period' below, cover is only available under this Extension of Cover if the applicable additional premium has been paid by the *policyholder*, as required by us.

If the *policyholder* selects an *extended reporting period* as described above, the *policyholder* and the *insured* do not have a right to cover under General Extension of Cover 2.6.1 'Extended reporting period' above.

- 2.6.3 The rights contained in General Extension of Cover 2.6.2 'Extended reporting period' will terminate:
- 2.6.3.1 unless written notice is given to us by the *policyholder* no later than 30 days after the effective date of the non-renewal of this policy or (if applicable) *change in control* (whichever is the earlier), of its intention to elect an *extended reporting period* described above; and
  - 2.6.3.2 unless as a condition precedent to the extended cover under General Extension of Cover 2.6.2 'Extended reporting period' above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the *extended reporting period* will be deemed fully earned at its commencement and non-refundable; and
  - 2.6.3.3 immediately upon the effective date of any insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under General Extension of Cover 2.6.1 'Extended reporting period'.
- 2.6.4 The *insured* agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability*, *combined limit of liability* or other terms, conditions or limitations) this does not constitute a refusal by us to renew.
- 2.6.5 Nothing in this Extension of Cover increases the *limit of liability* or *combined limit of liability*.

## 2.7 Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Zurich Educators Liability Insurance policy and such endorsement is to be made available to our clients for no additional premium, then the *policyholder* has the right to the benefit of, but not the obligation to accept, such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.

This Extension of Cover does not apply to any *policyholder*:

- 2.7.1 who is under *financial impairment*;
- 2.7.2 whose policy is operating within an *extended reporting period* under General Extension of Cover 2.6 'Extended reporting period'; or
- 2.7.3 whose policy is operating within an *extended discovery period* under Extension of Cover 3.8 'Extended discovery period' under Section 9; or
- 2.7.4 which has advised us of a *change in control* as per General Condition 4.5 'Change in control and public offering'.

## 2.8 Marital estates

We will pay such *financial loss*, *supplementary legal expenses loss* or *statutory liability loss* arising from any *claim* made against the lawful spouse or domestic partner of any *insured person* arising solely out of a *wrongful act* by such *insured person* or *civil liability* incurred by such *insured person* that is covered under this policy and made solely against such persons or the estate in his or her respective capacity as the spouse or domestic partner of any such *insured person*.

The cover provided by this Extension of Cover is limited to *financial loss, supplementary legal expenses loss* or *statutory liability loss* arising from actions or proceedings for the enforcement of judgments or damages against an *insured person* which relate to the ownership of property (including marital community property) jointly held by the *insured person* and his or her spouse or domestic partner. All cover provided by this Extension of Cover is subject to such lawful spouse or domestic partner, or the estate in his or her respective capacity as the spouse or domestic partner, observing and being subject to the terms, conditions and limitations of this policy in so far as they can apply.

This Extension of Cover does not cover any *claim* arising out of any act or omission of the spouse or domestic partner.

## 2.9 Non-Disclosure and Misrepresentation waiver

Where we have any rights in respect of non-disclosure or misrepresentation we agree not to rescind or avoid this policy. In respect of any non-disclosure or misrepresentation, we will be entitled to reduce our liability to pay for *financial loss, supplementary legal expenses loss* or *statutory liability loss* in respect of a *claim* or *investigation* by an amount equivalent to the amount that would place us in the position in which we would have been if the non-disclosure or misrepresentation had not occurred. Any such rights will only be exercised:

- 2.9.1 against an *insured person* who, before inception of this policy, knew the facts or matters not disclosed or misrepresented, and any *institution* to the extent that it may indemnify such *insured person*;
- 2.9.2 against an *institution* where any past, present or future principal, bursar, director, chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *institution* or the holder of any equivalent position in a jurisdiction, knew the facts or matters not disclosed or misrepresented,

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

For clarity, this Extension of Cover does not apply to any right we may have to cancel the policy. We are entitled to cancel the policy for non-payment of premium.

Nothing in this paragraph derogates from General Condition 4.18 'Severability and Non-Imputation'.

## 2.10 Retired directors and officers

On the basis that:

- 2.10.1 this policy is neither renewed nor replaced with an Educators Liability Insurance Policy, similar contract of insurance or any indemnity, which effectively replaces or renews the coverage afforded by this policy; or
- 2.10.2 no *extended reporting period* arises or is effected under General Extension of Cover 2.6 'Extended reporting period',

then those *directors* and *officers* who retired from the *institution* during the *period of insurance* will automatically be entitled to a single *extended reporting period* under this policy of 84 months (being the maximum period for all *directors* and *officers* in the aggregate) at no additional premium, however, always subject to the terms, conditions and limitations of this policy.

## 2.11 Runoff cover for outside entity executives

In the event that an *insured person* ceases to act as an *outside entity executive* of an *outside entity* (as defined within this policy) at any time prior to or during the *period of insurance*, then this policy will continue to apply with respect to any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable), but only with respect to *wrongful acts* committed prior to the date such person ceased to be an *outside entity executive* of such *outside entity* and committed during the time such person was an *outside entity executive* of such *outside entity* and otherwise covered under the terms, conditions and limitations of this policy.



## 2.12 Runoff cover for past subsidiaries

In the event that a *subsidiary* ceases to be a *subsidiary* (as defined within this policy) at any time prior to or during the *period of insurance*, then this policy will continue to apply with respect to any *claim* made against such *subsidiary* and any *insured person* thereof first brought during the *period of insurance* or the *extended reporting period* (if applicable), but only with respect to *wrongful acts* committed or *civil liability* incurred prior to the date such entity ceased to be a *subsidiary* and committed during the time such entity was a *subsidiary*, and otherwise covered under the terms, conditions and limitations of this policy.

## 3. General Exclusions

We will not be liable under this policy to make any payment for:

### 3.1 Anti-competitive practices

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to any *claim* made for any actual or alleged violation of any law, regulation or by-law anywhere in the world which regulates or restricts anti-trust or monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices or tortious interference in another's business or contractual relationships.

This Exclusion does not apply to Section 1.

### 3.2 Bodily injury / Property damage

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to *bodily injury* and/or *property damage* except that cover is provided:

- 3.2.1 for mental anguish or emotional distress in connection with any *employment practices claim*;
- 3.2.2 for *financial loss*, *supplementary legal expenses loss* or *statutory liability loss* under General Extension of cover 2.4 Environmental mismanagement coverage;
- 3.2.3 for *defence costs* and *investigation costs* specified under Section 1, Extension of Cover 3.8 'Workplace health and safety';
- 3.2.4 for *representation costs* specified under Section 2, Extension of Cover 3.3 'Representation costs';
- 3.2.5 for loss of documents under Section 4, Extension of Cover 3.5 'Loss of documents';
- 3.2.6 under Sections 7 and 8; and
- 3.2.7 for *loss* covered under Section 9.

### 3.3 Conduct

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to:

- 3.3.1 any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
  - 3.3.2 any criminal, fraudulent, dishonest or malicious act or omission committed by any *insured*;
- provided that this exclusion does not apply to *defence costs* incurred by an *insured person* or by the *institution* in connection with a *corporate manslaughter proceeding* or workplace health and safety proceeding.

For the avoidance of doubt, this exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the Corporations Act 2001 (Cth) applies.

This Exclusion only applies where the conduct in question has been finally established, by court judgment or other final adjudication (including all available appeals).

This Exclusion does not apply to Sections 4, 7 or 9.



For the purpose of determining the applicability of this exclusion:

- (i) no conduct or knowledge of an *insured person* will be imputed to any other *insured person*; and
- (ii) to Section 2, only the conduct and knowledge of any past, present or future principal, bursar, director, chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *institution* will be imputed to the *institution*.

### 3.4 Contractual liability

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to any liability of the *institution* under any contract or agreement, provided that this exclusion does not apply to any *institution* liability that would have attached in the absence of such contract.

This Exclusion applies to Sections 2 and 4 only.

### 3.5 Environmental event

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to an *environmental event*, except as provided under General Extension of Cover 2.4 'Environmental mismanagement coverage', under Extension 3.7 of Section 1 'Investigations' or under Extension 3.3 of Section 2 'Representation costs'.

### 3.6 Insolvency

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the *insolvency* of the *insured*.

However this exclusion only applies, if as at the date this policy incepts:

- 3.6.1 the *insured* is insolvent;
- 3.6.2 any *insured person* knew any *insured* was insolvent; or
- 3.6.3 any *insured* was in a position where they had reasonable grounds for suspecting that any *insured* was insolvent or would be likely to become insolvent during the *period of insurance*.

### 3.7 Insured vs Insured

any *claim* brought by, at the instigation of, or on behalf of:

- 3.7.1 an *insured person* provided that this Exclusion does not apply to:
  - (i) a *claim* for an *employment practices breach* brought or maintained by any *insured person* or *employee*; or
  - (ii) 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 pursuant to Section 1 or 3;
  - (iii) any *claim* brought or maintained by any former director, secretary or executive officer; or
  - (iv) any student, but only in relation to Section 4;
- 3.7.2 the *institution*, except a *claim* made on its behalf:
  - (i) by the Australian Securities and Investments Commission, pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth) or otherwise, or any like legislation; or
  - (ii) 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
  - (iii) 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*; or
- 3.7.3 any parent or controlling entity, successor or assign of any *insured*.

### 3.8 Jurisdiction and territorial scope

- 3.8.1 *loss* or liability incurred or *wrongful acts* occurring within the United States of America or the Dominion of Canada or their territories or protectorates;
- 3.8.2 *loss* based upon, arising from or attributable to any *investigation* conducted within the United States of America or the Dominion of Canada or their territories or protectorates;
- 3.8.3 any *claim* which is brought before any court or tribunal having actual or purported jurisdiction within the United States of America or the Dominion of Canada or their territories or protectorates;
- 3.8.4 any *claim* arising from the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within the United States of America or the Dominion of Canada or their territories or protectorates; or
- 3.8.5 any *claim* which is pursued by way of arbitration, mediation, conciliation, expert determination or any other form of alternative dispute resolution procedure taking place outside of or in a jurisdiction within the United States of America or the Dominion of Canada or their territories or protectorates, or for the recovery of any award or costs issued or incurred in connection with any such procedure,

unless otherwise stated in this policy.

Provided always, that if the *schedule* has been endorsed so that Territorial Scope and Jurisdiction includes the United States of America and Canada, then except in relation to Section 9, our maximum liability in the aggregate for all *loss*, liability, *wrongful acts*, *claims* and *investigations* described in 3.8.1 to 3.8.5 above will not exceed the United States of America and Canada *sub-limit* specified in the *schedule*.

### 3.9 Manufacturing/efficacy/faulty workmanship

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to:

- 3.9.1 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*; or
- 3.9.2 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*.

This Exclusion applies to Sections 2 and 4 only.

### 3.10 Molestation

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the molestation of or interference with a minor or minors, committed or alleged to have been committed by an *insured* or any other person.

### 3.11 Outside entity executive – prior and pending

*loss*, any liability or any *claim* made against any *insured* or *investigation* in respect of any *outside entity executive* if such *claim* is based upon, arises from or is attributable to any:

- 3.11.1 litigation, suit, *claim*, arbitration or mediation initiated prior to or pending on the date such *outside entity executive* first became insured under this policy in such capacity; or litigation, suit, arbitration or mediation which alleges or is derived from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation; or
- 3.11.2 circumstances known by such *outside entity executive* or the *institution* prior to the date such *outside entity executive* first became insured under this policy in such capacity, which could reasonably have given rise to a *claim* under this policy.

### 3.12 Prior notice

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to any:

3.12.1 litigation, *claim*, *investigation* or circumstance existing prior to the *period of insurance* that has been reported under any insurance or indemnity of which this policy is a renewal or replacement or which it may succeed in time; or

3.12.2 fact, circumstance, act or omission or *claim* disclosed in the renewal *submission* or for which notice has been given to any other insurer before the commencement of the *period of insurance*.

### 3.13 Professional services

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to any *claim* made for any actual or alleged act or omission, including but not limited to any error, misstatement, misleading statement, neglect or breach of duty committed, attempted or allegedly committed or attempted in the rendering of or actual or alleged failure to render any professional service or advice to a *third party*, customer or *client* of the *insured*.

This Exclusion does not apply to Section 4.

### 3.14 Prospectus

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the initial public offering of *securities* of the *institution* during the *period of insurance*, unless we agree to cover the initial public offering and give written confirmation of such agreement.

### 3.15 Subsidiary

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the *wrongful act* of:

3.15.1 any *insured person* of any *subsidiary*; or

3.15.2 the *subsidiary*,

committed prior to such entity becoming a *subsidiary* or after such entity ceases to be a *subsidiary*.

This Exclusion is subject to any cover granted by us under General Extension of Cover 2.12 'Runoff cover for past subsidiaries' and General Condition 4.7 'Creation and acquisition of subsidiaries'.

### 3.16. Superannuation fund trustees

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the infringement of obligations imposed by any statute, regulation or common law whilst acting in the capacity of *trustee* of any pension or superannuation trust, plan or scheme operated by or at the behest of the *institution* for the benefit of its *employees*.

This Exclusion does not apply to Section 5.

### 3.17 Trading debts

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to any trading or business debt incurred by the *institution*.

### 3.18 War, Act of terrorism

*loss*, any liability or any *claim* made against any *insured* or *investigation* based upon, arising from or attributable to the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- 3.18.1 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;
- 3.18.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

This Exclusion applies to Sections 4 and 9 only.

## 4. General Conditions

The following General Conditions apply to all *cover sections* unless otherwise stated.

### 4.1 Allocation

Our liability under this policy is limited to the proportion of *financial loss*, *supplementary legal expenses loss* or *statutory liability loss* which is a fair and equitable allocation:

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

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued).

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

While no fair and equitable allocation has been agreed or determined, we will advance *defence costs*, *investigation costs*, *representation costs*, or fees, expenses or disbursements as set out in clause 2.3.3 of Section 7 in the proportion which we contend should be allocated to *financial loss*, *supplementary legal expenses loss* or *statutory liability loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs* *investigation costs*, *representation costs*, or fees, expenses or disbursements as set out in clause 2.3.3 of Section 7 incurred prior to the date of such negotiation or determination.

### 4.2 Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes will be exclusively governed by the law applicable in the Commonwealth of Australia and the relevant State in which this policy is issued by us.

### 4.3 Assignment

This policy and any rights thereunder must not be assigned without our prior written consent, such consent not to be unreasonably withheld or delayed.

#### 4.4 Cancellation

Without derogating from our rights in General Extension of Cover 2.9 'Non-Disclosure and Misrepresentation waiver', this policy may not be cancelled by us, except for non-payment of premium. If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 90% of the premium for the unexpired *period of insurance*.

#### 4.5 Change in control and public offering

4.5.1 If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy will only apply in respect of *wrongful acts* or other conduct occurring prior to the effective date of such *change in control*. The *policyholder* must give us written notice of such *change in control* as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a *change in control*, if the *policyholder* cancels this policy, a refund of premium will be allowed pro rata of 90% of the premium for the unexpired *period of insurance*.

4.5.2 If during the *period of insurance* the *policyholder* or any *subsidiary* plans or makes, a public offering of its *securities*, it must inform us as soon as reasonably practicable. We will not be liable to make any payment of *financial loss* arising from any *securities claim* associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the *policyholder* agrees with us on any amendments to this policy and makes payment of any additional premium required, after which cover will apply retroactively for the full *period of insurance*.

The payment of any additional premium (including insurance premium tax) is a condition precedent to our liability under 4.5.2 of this General Condition.

#### 4.6 Confidentiality

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

4.6.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability; or

4.6.2 we consent in writing to disclosure of the existence and/or terms, conditions and limitations of this policy.

#### 4.7 Creation and acquisition of subsidiaries

Any entity, whether created or acquired, that becomes a *subsidiary* during the *period of insurance* of this policy and any *directors* or *officers* (or equivalent executive or management position) thereof, will be *insureds* under this policy with respect to:

4.7.1 *claims* for *wrongful acts* or based on *civil liability*;

4.7.2 *investigations* in relation to conduct; and

4.7.3 coverage provided to the *institution* under Sections 2, 3, 6, 7, 8 and 9,

occurring after the date such entity became a *subsidiary* and while such entity remains a *subsidiary*.

Provided that for the purpose of Section 4, 'Professional Liability' this General Extension only applies to a created or acquired *subsidiary* that has the same profession, business or occupation specified as the *professional services* in the *schedule*.

## 4.8 Deductible

4.8.1 The *deductibles* applicable to each *cover section* are set out in the *schedule*.

We will be liable only for the amount of *loss* that exceeds the applicable *deductible* specified in the *schedule*. The *deductible* is not part of our liability for *loss*. The *deductible* is to be borne by the *policyholder* unless otherwise specified and must remain uninsured.

Irrespective of the number of *insureds* claimed against, a single *deductible*, being the highest, applies to all *loss* in respect of any one *claim*, or two or more *claims* arising from the same source or originating cause.

All *crime claims* for *crime loss* of any kind sustained as a result of the same or causally related acts, causes or events will be deemed to be one *crime claim* for *crime loss* regardless of when during the *period of insurance* or prior thereto such acts occurred.

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

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

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

4.8.3 If upon notification we determine a *claim* can be settled without the need to incur *defence costs* we may, at our absolute discretion, recommend a settlement of the matter. If the *insured* consents to the settlement and the matter is then settled in accordance with our recommendation we will reduce or refund 50% of the *deductible*. This will not apply to Section 9.

## 4.9 Defence costs and Settlements

4.9.1 It is Zurich's right and duty and not the *insured's* duty to take all reasonable steps to defend any *claim* or *investigation* and the *insured* is required not to do anything to prejudice their and/or our position.

4.9.2 With respect to any *claim* or *investigation* as may potentially be covered by this policy, we have the right to:

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

4.9.3 The *insured* must not admit or assume any liability; enter into any settlement agreement; consent to any judgment; or incur any *defence costs*; any fees, expenses or disbursements as set out in clause 2.3.3 of Section 7 clause; or any *investigation costs*.

Only those:

- (a) settlements;
- (b) consent judgments;
- (c) *defence costs*;
- (d) fees, expenses or disbursements as set out in clause 2.3.3 of Section 7; and
- (e) *investigation costs*;



that have been consented to by us in writing are recoverable as *financial loss, supplementary legal expenses loss* or *statutory liability loss* under the terms of this policy (other than as covered under General Extension of Cover 2.1 'Advancement of defence costs and other costs and expenses (including emergencies)').

We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss, supplementary legal expenses loss and statutory liability loss*) for an amount not exceeding the applicable *deductible*, then our consent is not required for such disposition.

- 4.9.4 If the *insured* withholds consent to any settlement acceptable to the claimant in accordance with our recommendation, then our liability for all *financial loss, supplementary legal expenses loss* or *statutory liability loss* on account of such *claim* will not exceed the amount for which we could have settled such *claim* including *defence costs* and any fees, expenses or disbursements as set out in clause 2.3.3 of Section 7, accrued as at the date such settlement was proposed in writing from us to such *insured*.

#### 4.10 Goods and Services Tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When we make 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, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

#### 4.11 Limit of liability

##### 4.11.1 Combined limit of liability – Sections 1-6

Subject to the Insuring Clauses for the applicable *cover sections* and Extensions of Cover, the *combined limit of liability* specified in the *schedule* is our maximum liability, in the aggregate, payable under Sections 1, 2, 3, 4, 5 and 6 of this policy for all:

- (a) covered *financial loss* or *loss* (including but not limited to *defence costs*) arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable);
- (b) *investigations costs* incurred by all *insured persons* in connection with all *investigations*;
- (c) *representation costs* incurred by the *institution* in connection with all *investigations*; and
- (d) insofar as not encompassed within (a), (b) and (c) above, all sums payable under any of the Extensions of Cover, unless otherwise stated.

##### 4.11.2 Limit of liability – Section 6 Internet Liability

Subject to the Insuring Clause for Section 6 and the Extensions of Cover, the *limit of liability* for Section 6 specified in the *schedule* is our maximum liability, in the aggregate, payable under Section 6 of this policy for all covered *financial loss* (including but not limited to *defence costs*) arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable) and all sums payable under any of the Extensions of Cover, unless otherwise stated;



#### 4.11.3 **Limit of liability – Section 7 Supplementary legal expenses**

Subject to the Insuring Clause for Section 7 and the Extensions of Cover, the *limit of liability* for Section 7 specified in the *schedule* is our maximum liability, in the aggregate, payable under Section 7 of this policy for all covered *supplementary legal expenses loss* arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable) and all sums payable under any of the Extensions of Cover, unless otherwise stated;

#### 4.11.4 **Limit of liability – Section 8 Statutory liability**

Subject to the Insuring Clause for Section 8 and the Extensions of Cover, the *limit of liability* for Section 8 specified in the *schedule* is our maximum liability, in the aggregate, payable under Section 8 of this policy for all covered *statutory liability loss* (including but not limited to *defence costs*) arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable) and all sums payable under any of the Extensions of Cover, unless otherwise stated;

#### 4.11.5 **Limit of liability – Section 9 Commercial crime**

Subject to the Insuring Clause for Section 9 and the Extensions of Cover, the *limit of liability* for Section 9 specified in the *schedule* is our maximum liability, in the aggregate, payable under Section 9 for all covered *crime loss* first discovered during the *period of insurance* and any *extended reporting period*, (if applicable) and all sums payable under any of the Extensions of Cover, unless otherwise stated.

4.11.6 The applicable *limit of liability* will apply over and above the applicable *deductible*.

4.11.7 The *limit of liability* for any applicable *extended reporting period* does not increase the applicable *limit of liability*.

All *sub-limits* that apply to a particular *cover section* are part of and not in addition to the *limit of liability* for that *cover section*, unless expressly stated within an Extension of Cover.

4.11.8 The *director or officer excess limit of liability* is in addition to the *limit of liability* and the *combined limit of liability*.

The *director or officer excess limit of liability* is inclusive of all covered *financial loss* including but not limited to *defence costs* and *investigation costs*.

4.11.9 Where more than one *claim* arises from a *wrongful act* or from a series of *wrongful acts* which are in any way connected causally with another or which are by any means related or connected, or in the case of one or more *investigations* (whether linked to a *claim* or otherwise) which have a common or related cause or source they will be deemed to be a single *claim* or a single *investigation* and such single *claim* or single *investigation* will (irrespective of the *period of insurance* in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting periods* (if applicable) during which the first *claim* of such *claims* was first made or the first *investigation* of such *investigation* series was first commenced.

4.11.10 Under Section 9 where more than one *crime claim* for *crime loss* arises from an act or from a series of acts which are in any way connected causally with another or which are by any means related or connected, they will be deemed to be a single *crime claim* and such single *crime claim* will (irrespective of the *period of insurance* in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting periods* (if applicable) during which the first *crime claim* of such *crime claims* was first made.

### 4.12 Notification

The *institution* must, as a condition precedent to our liability under this policy, give written notice to us of:

4.12.1 any *claim* made against an *insured*; or

4.12.2 any written requirements that an *insured person* or the *institution* attend an *investigation* or any circumstance that may lead to such a request,

as soon as is reasonably practicable after the *institution's* risk manager, general counsel, company secretary, chief legal counsel or equivalent position first becomes aware of such *claim*, or such *investigation*, but in all events no later than 90 days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

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

- 4.12.3 *claim* or any circumstance that may lead to such a *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *institution* or *insured persons*, as the case may be, first became aware of the *claim*; or
- 4.12.4 *investigation*, or any circumstance that may lead to such a request, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *institution* or *insured persons*, as the case may be, first become aware of the *investigation*.

Written notice hereunder must be provided in writing to:

The Financial Lines Claims Manager  
Zurich Australian Insurance Limited  
PO Box 677 North Sydney 2059

Or by email to:

The Financial Lines Claims Manager  
fl.claims@zurich.com.au

Any notification, sent by post or email, will be effective from the date received by Zurich.

#### 4.13 Order of payments

In the event of *financial loss* arising from a *claim* or an *investigation* for which payment is due under the provisions of this policy, then we will in all events:

- 4.13.1 first, pay *financial loss* for which coverage is provided under Section 1, Insuring Clause 1.1 'Directors and officers liability' and Section 1, Extension of Cover 3.7 'Investigations'; then
- 4.13.2 only after payment of *financial loss* has been made pursuant to General Condition 4.13.1 'Order of payments' above, with respect to whatever remaining amount of the *limit of liability* or *combined limit of liability* is available after such payment, pay such other *financial loss* for which coverage is provided under Section 1, Insuring Clause 1.2 'Institution reimbursement' and Sections 2, 3, 4, 5 and 6.

The *institution* agrees that we are entitled to withhold payment under Section 1, Insuring Clause 1.2 'Institution reimbursement' and Sections 2, 3, 4, 5 and 6 until our obligations under Section 1, Insuring Clause 1.1 'Directors and officers liability' and Section 1, Extension of Cover 3.7 'Investigations' are met.

The bankruptcy or *insolvency* of any *institution* does not relieve us of our obligations to prioritise payment of covered *financial loss* under this policy pursuant to this condition.

#### 4.14 Other insurance and Non-Accumulation

- 4.14.1 To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *loss* to the extent that the amount of such *loss* is in excess of any indemnity or cover available to the *insured* in respect of that *loss* under any other policy of insurance entered into by the *insured persons* or the *institution*.
- 4.14.2 To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *loss* to the extent that the amount of such *loss* is in excess of any indemnity or cover available to the *insured* in respect of that *loss* under any other policy of insurance effected on behalf of the *insured* or under which any *insured person* or the *institution* is a beneficiary (but not a policy to which the preceding paragraph applies).
- 4.14.3 Neither General Condition 4.14.1 or 4.14.2 above, applies to such other insurance that is written only as specific excess insurance over the *limit of liability* or *combined limit of liability* provided in this policy.
- 4.14.4 If the other insurance referred to in General Condition 4.14.1 or 4.14.2 above, is provided by us, or any other member company, associate or affiliate of the Zurich Financial Services Group of companies, and it covers *loss* covered by this policy in respect of a *claim* or *investigation*, the *limit of liability* or *combined limit of liability* under this policy in respect of that *claim* or *investigation* will be reduced by any amount paid by us (or member company, associate or affiliate of the Zurich Financial Services Group of companies) under such other insurance.

#### 4.15 Plurals and titles

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

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

#### 4.16 Recoveries

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

- 4.16.1 the costs incurred in the course of such recovery, whether to the *insured* or to us;
- 4.16.2 to the *insured* in respect of any amount of covered *loss* which exceeds the *limit of liability* or *combined limit of liability*;
- 4.16.3 to us to the extent of the covered *loss* paid or payable;
- 4.16.4 to the *policyholder* for the amount of any *deductible* applicable.

#### 4.17 Sanctions regulation

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

#### 4.18 Severability and Non-Imputation

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

- 4.18.1 no statement in the *submission* made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured person* will be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;
- 4.18.2 the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* will be imputed to the *institution* for the sole purpose of determining if coverage is available under Section 1, Insuring Clause 1.2 'Institution reimbursement' of this policy with respect to *claims* against such *insured person*, but will not be imputed to the *institution* with respect to *claims* against other *insured persons* for the purpose of coverage under Section 1, Insuring Clause 1.2 'Institution reimbursement' in relation to the *financial loss* of that other *insured person*; and
- 4.18.3 only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *institution* will be imputed to the *institution* for the purposes of cover under Sections 2, 3, 4, 5, 6 and 8 in relation to the *financial loss or statutory liability loss* of any *subsidiary*.

#### 4.19 Subrogation

In respect to Sections 1, 2, 3, 4, 5, 6, 7 and 8 upon any payment of or towards any *claim* we will be entitled to assume conduct of all rights of recovery available to any *insured* and all reasonable assistance must be rendered to us in the prosecution of such rights by such *insured persons, employees* or the *institution*, at their own cost.

Except in respect of Section 9, in no event, however, will we exercise our rights of subrogation against an *insured person or employee* under this policy unless it is determined by a written admission, a final judgment or other adjudication in the underlying action or in a separate action or proceeding that such *insured person or employee* had obtained an illegal profit or advantage or committed an intentionally dishonest act or omission or intentional fraudulent act or a criminal act.

In respect to Section 9, we may at any time at our own expense take such steps as we may deem necessary to obtain reimbursement from any person (or that person's estate) committing a *criminal act* against the *insured* resulting in a *loss* which we have paid or will become liable to pay under this policy and for this purpose use the name of the *insured*. The *institution* must as and when required give all necessary information and assistance to us.

#### 4.20 Valuation and foreign currency

All premiums, *limits of liability, sub limits, deductibles*, retentions, *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 will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars in accordance with the Reserve Bank of Australia 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.

#### 4.21 Increased Deductible Non-Zurich Defence Panel

Where the *policyholder* chooses to retain legal counsel in the defence of any *claim* under the policy, which is not on Zurich's Edupac published legal defence panel for the policy period, then the basic *deductible* for all applicable *cover sections* shall be increased by 100% for that *claim*. However, this condition shall not apply, where the *policyholder* obtains Zurich's prior written agreement to retain counsel outside of the Edupac legal defence panel and such counsel agrees to Zurich's Edupac litigation guidelines.

# Section 1 – Insured Persons Liability

## Introduction

This *cover section* automatically forms part of your policy.

## 1. Insuring Clauses

### 1.1 Directors and officers liability

We will pay to or on behalf of any *insured person* any *financial loss* of such *insured person* arising from any *claim* which alleges a *wrongful act*, first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) save to the extent that such *insured person* is indemnified by the *institution*.

### 1.2 Institution reimbursement

We will pay on behalf of the *institution* the *financial loss* of an *insured person* arising from any *claim* which alleges a *wrongful act*, first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) but only to the extent the *institution* has indemnified the *insured person*.

## 2. Definitions

The following Definitions and the General Definitions apply to this *cover section*.

### 2.1 Associated company

*associated company* means a company or legal entity in respect of which, at the inception of the *period of insurance*, the *policyholder* owns, directly or indirectly, greater than 20% 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*.

### 2.2 Civil or bail bond expenses

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

### 2.3 Corporate manslaughter proceeding

*corporate manslaughter proceeding* means a formal criminal proceeding against an *insured person* for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in their capacity as such for the *institution* and directly related to the business of the *institution*.

### 2.4 Deprivation of assets expenses

*deprivation of assets expenses* means the payment of the following services for the benefit of an *insured person*, his or her spouse, domestic partner or dependants only, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an *insured person* or creating a charge over real property or personal assets of the *insured person* during the *period of insurance*:

2.4.1 housing;

2.4.2 utilities;

2.4.3 personal insurances; and

2.4.4 schooling.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted. Expenses will be payable after 30 days following the event above for a period of up to 12 months.

### 2.5 Director or Officer Excess Aggregate Limit of Liability

*director or officer excess aggregate limit of liability* means the limit of liability specified in the *schedule* in respect of all *directors' or officers' claims* and *investigations* in the aggregate under Extension of Cover 3.5 'Excess limit of liability for directors or officers'.

## 2.6 Director or Officer Excess Limit of Liability

*director or officer excess limit of liability* means the limit of liability specified in the *schedule* in respect of each *director or officer* under Extension of Cover 3.5 'Excess limit of liability for directors or officers'.

The 'Directors or Officers Excess Limit of Liability' is a separate *limit of liability* for each *director or officer* and applicable only to that *director or officer*.

## 2.7 Extradition claim

*extradition claim* means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1988 (Cth) or any replacement legislation in Australia or similar legislation in any other jurisdiction.

## 2.8 Extradition costs

*extradition costs* means reasonable legal fees, costs and expenses incurred by an *insured person* with our prior written consent, which will not be unreasonably delayed or withheld, to obtain legal advice or to bring or defend an *extradition claim* or any other proceedings including by way of judicial review or other challenge to the political executive's decision to order an *insured person's* extradition and to pursue appeals.

## 2.9 Investigation costs

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

*Investigation costs* do not include any fines or penalties, or the equivalent, levied or imposed in connection with the *investigation*.

## 2.10 Judicial order

*judicial order* means:

2.10.1 an interim or interlocutory judicial order; or

2.10.2 a judicial order with respect to any proceeding concerning the deportation of any *insured person*, provided that any judicial order against an *insured person* must be in connection with a *claim* against such *insured person* or an *investigation* that is covered under this *cover section*.

## 2.11 Prosecution costs

*prosecution costs* means the reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employee* of any *institution*, costs of their time or overhead of any *institution*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, incurred pursuant to Extension of Cover 3.11 'Prosecution Costs'.

## 2.12 Shadow director

*shadow director* means, unless the contrary intention appears, any person who has not been validly appointed as a director, if:

2.12.1 they act in the position of a director; or

2.12.2 the directors of the *institution* or body are accustomed to act in accordance with the person's instructions or wishes.

However a person is not a shadow director pursuant to paragraph 2.12.2 above, merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the *institution* or body.



### 3. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

#### 3.1 Civil or bail bond expenses

We will pay to or on behalf of an *insured person* *civil or bail bond expenses of an insured person* incurred in respect of a *claim* covered under this *cover section* including but not limited to an extradition proceeding.

#### 3.2 Court attendance costs

We will pay up to \$500 per day for court attendance costs incurred by the *insured person*, if the *insured person* is legally compelled to attend a civil proceeding as a witness in a *claim* which is covered under this *cover section*, whether or not a *wrongful act* is alleged against such *insured person*. Our total aggregate liability during any one *period of insurance* for all court attendance will not exceed \$100,000.

#### 3.3 Deprivation of assets expenses

We will pay to or on behalf of an *insured person* *deprivation of assets expenses* arising from any *claim* covered under this *cover section* or *investigation* for which an *insured* is entitled to cover under this *cover section* for *investigation costs*.

#### 3.4 Employment practices claims

We will pay to or on behalf of an *insured person* *any financial loss of an insured person arising from employment practices claims* against *insured persons* including in their capacity as *outside entity executives*.

#### 3.5 Excess limit of liability for directors or officers

In addition to the *limit of liability* and *combined limit of liability*, we will pay all *financial loss* on behalf of any *director* or *officer* in accordance with Section 1, Insuring Clause 1.1 'Directors and officers' and General Extension of Cover 2.6.1 'Extended reporting period' and Extension of Cover 3.7 'Investigations', on the following terms:

- 3.5.1 (a) the *financial loss* is otherwise covered by the *cover section*; and
- (b) our obligation to indemnify is only to the extent that such *insured person* is not lawfully indemnified by the *institution or outside entity* as applicable;
- 3.5.2 coverage provided by this Extension of Cover is specifically excess of, and will only be available after the exhaustion of:
  - (a) the *limit of liability* of this *cover section*;
  - (b) the overall aggregate *combined limit of liability* of this policy;
  - (c) any other policy entered into by or effected on behalf of the *director or officer* or under which the *director or officer* is a beneficiary; and
  - (d) all other indemnification for *financial loss* available to the *director or officer*.
- 3.5.3 the coverage under this Extension of Cover will only operate as primary insurance after exhaustion of the sources of indemnification under Extension of Cover 3.5.2 'Excess limit of liability for directors or officers';
- 3.5.4 the *limit of liability* for cover under this Extension of Cover for each *director or officer* for all *financial loss* arising from all *claims* and *investigations* is the *director or officer excess limit of liability* specified in the *schedule*. The *directors or officers excess aggregate limit of liability* specified in the *schedule* is the maximum amount payable by us for the *financial loss* of all *directors or officers claims* and *investigations* in the aggregate under this Extension of Cover.



### 3.6 Extradition costs

We will pay to or on behalf of:

- 3.6.1 an *insured person extradition costs* (to the extent permitted by law) in respect of an *extradition claim* covered under this *cover section*;
- 3.6.2 an *insured person* the reasonable fees incurred by such *insured person*, with our prior written consent, which will not be unreasonably withheld, of a counsellor or tax adviser in respect of a covered *extradition claim*; and
- 3.6.3 the lawful spouse or domestic partner of an *insured person* in Extension of Cover 6. 'Extradition costs' (a) the reasonable travel, accommodation and living-away-from-home expenses in attending any hearing of such *extradition claim* against that *insured person*.

### 3.7 Investigations

We will pay *investigation costs to or on behalf of any insured person*, whether incurred directly by the *insured person*, or by the *institution* or *outside entity* pursuant to an indemnity provided to the *insured person*, to prepare for and attend any *investigation*:

- 3.7.1 into the conduct of such *insured person* in their capacity as a *director or officer* or an *outside entity executive*, whether or not a *wrongful act* is alleged against such *insured person*;
- 3.7.2 into the affairs of the *institution* or *outside entity* whether or not a *wrongful act* is alleged.

Cover under this Extension of Cover arises only when, and is in relation only to *investigation costs* incurred after, such *insured person* is requested in writing by such *official body* to attend such *investigation*, provided that such request to attend first arises during the *period of insurance* or within the *extended reporting period (if applicable)*. This Extension of Cover does not apply to general industry investigations or inquiries or routine regulatory inspections or inquiries.

This Extension of Cover does not apply to a *claim* as defined in Definition 'Claim', but the terms, conditions and limitations of this policy will apply to this Extension of Cover as if it were a *claim* including but not limited to the payment of the *deductible* in the *schedule* where the *institution* is permitted or required to indemnify the *insured person*.

General Exclusion 3.5 'Environmental Event' does not apply to this Extension.

### 3.8 Workplace health and safety

Notwithstanding General Exclusion 3.2 'Bodily injury / Property damage' we will pay *defence costs* to or on behalf of an *insured person* in respect of a *claim* by an *official body* and *investigation costs* in respect of an *investigation*, in relation to any alleged breach of workplace health and safety law. This Extension of Cover includes *defence costs* in relation to any *corporate manslaughter proceedings*.

### 3.9 Outside entity executive

We will pay on behalf of any *outside entity executive* subject to the terms, conditions and limitations of this *cover section*, *financial loss* arising from any *claim* first made against him or her during the *period of insurance* for a *wrongful act* committed or attempted by or allegedly committed or attempted whilst serving or acting in his or her capacity as an *outside entity executive*.

This cover:

- 3.9.1 automatically applies from the date of an *outside entity executive's* appointment to:
  - (a) any *non-profit organisation*; or
  - (b) any *associated company*.
- 3.9.2 automatically applies for a period of 90 days from the date of an *outside entity executive's* appointment to any for profit company, unless we agree to continue to cover any such *outside entity executive* and such for profit company is specifically listed as an *outside entity* in an endorsement attached to this *cover section*.

3.9.3 does not apply to an *outside entity executive's* appointment to:

- (a) any *financial institution*;
- (b) any entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or
- (c) any other entity that had negative net assets or negative net worth at the inception date of this *cover section*,

unless Zurich agrees to cover any such *outside entity executive's* appointment to such *financial institution* or entity noted in (a) to (c) above, which is specifically listed as an *outside entity* in an endorsement attached to this *cover section*.

Without detracting from the operation of General Condition 4.14 'Other insurance and Non-Accumulation', this extension of cover is available only as specific excess cover over and after exhaustion of any other applicable, valid and collectible policy of insurance and also any indemnification permitted or required to be paid by such *outside entity*.

### 3.10 Preservation / presumption of right to indemnity

In the event and to the extent that the *institution* or an *outside entity* is permitted or required to indemnify any *insured persons* for *financial loss* covered by this *cover section*, but for whatever reason fails or refuses to do so, then we will pay the *financial loss* on behalf of the *insured persons*. In such event, the Insuring Clause 1.2 'Institution reimbursement' *deductible* specified in the *schedule* will be borne by the *institution*.

### 3.11 Prosecution costs

We will pay for or on behalf of an *insured person* *prosecution costs* of the *insured person* in bringing or defending proceedings, including appealing the decision of such proceeding:

3.11.1 against an *official body* conducting an *investigation* wherein the *insured person* alleges that the *official body* is acting beyond power or in breach of the rules of natural justice directly in relation to matters affecting, or potentially affecting, the *insured person* in such *investigation*;

3.11.2 to obtain the discharge or revocation of:

- (a) a temporary or permanent disqualification of such *insured person* from managing a corporation (including as a senior manager or responsible officer) during the *period of insurance*; or
- (b) a *judicial order* entered during the *period of insurance* imposing:
  - (i) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
  - (ii) a charge over real property or personal assets of such *insured person*;
  - (iii) a restriction of such *insured person's* liberty to a specified domestic residence or detention facility; or
  - (iv) deportation of an *insured person* following revocation of otherwise current and valid immigration status for any reason, other than such *insured person's* conviction of a crime.

For the avoidance of doubt, *prosecutions costs* are only available in the event that a *claim* has been made against an *insured person* that is covered by this *cover section*.

### 3.12 Tax liability

We will pay the liability which an *insured person* incurs personally for the unpaid taxes of the *institution* due to the *institution's financial impairment*. Provided that we will not cover any liability that arises due to an *insured person's* criminal, deliberate or wilful breach of any law or regulation.

## 4. Exclusions

The General Exclusions also apply to this *cover section*.

# Section 2 – Institution Liability

## Introduction

This *cover section* automatically forms part of your policy.

### 1. Insuring Clause

We will pay to or on behalf of the *institution* any *financial loss* arising from any *claim* first made against the *institution* during the *period of insurance* or any *extended reporting period* (if applicable) which alleges a *wrongful act*.

### 2. Definitions

The following Definitions and the General Definitions apply to this *cover section*.

#### 2.1 Representation costs

*representation costs* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *institution*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of the *institution* directly in connection with its preparation for and attendance at an *investigation*.

#### 2.2 Tax audit costs

*tax audit costs* means reasonable costs and expenses of a qualified accountant or registered tax agent (other than remuneration payable to any *insured persons* or *employees* of the *institution*) incurred by the *institution*, with our prior written consent, such consent not to be unreasonably withheld or delayed, arising from a *tax audit notice* issued to the *institution*.

#### 2.3 Tax audit notice

*tax audit notice* means a written notification from the Australian Taxation Office of a tax audit or investigation relating to the *institution's* liability to pay tax.

### 3. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

#### 3.1 Indemnity costs for shareholder derivative claims

If the *institution* is ordered by a court to pay the costs of the claimants in pursuing a derivative action against *insured persons* (hereinafter 'indemnity costs for shareholder derivative claims') this *cover section* is extended to pay such costs provided that such derivative action constitutes a *claim* or *securities claim* otherwise covered under this *cover section*.

#### 3.2 Workplace health and safety

We will pay *defence costs* to or on behalf of the *institution* in respect of a *claim* by an *official body* in relation to any alleged breach of workplace health and safety law. This Extension of Cover applies notwithstanding General Exclusion 3.2 'Bodily injury / Property damage'.

Our total aggregate liability any one *period of insurance* provided under this Extension of Cover will not exceed \$500,000 or the amount specified in the *schedule*.

#### 3.3 Representation costs

We will pay to or on behalf of the *institution* any *representation costs* for the *institution* to prepare for and attend:

3.3.1 any *investigation*, in relation to any alleged breach of an *environmental event*;

3.3.2 any *investigation*, in relation to any alleged breach of workplace health and safety law;

3.3.3 any *investigation* brought by an *official body* into the affairs of the *institution* whether or not a *wrongful act* is alleged. Cover under this Extension of Cover arises only when, and is in relation only to *representation costs* incurred after, the *institution* is requested in writing by such *official body* to attend such *investigation*, provided that the request to attend first arises during the *period of insurance* or within the *extended reporting period* (if applicable).

General Exclusion 3.5 'Environmental event' does not apply to part 3.3.1 of this Extension.

### 3.4 Superannuation schemes

We will pay to or on behalf of the *institution* any *financial loss* resulting from any *claim* in connection with any act, error or omission in connection with the operation, administration or sponsorship of any superannuation, profit sharing or *employee* benefits programme whose activities are not controlled by *third party* Superannuation Trustees arrangement.

For avoidance of doubt, no cover under this Extension of Cover applies to the *third party* Superannuation Trustees company.

Our total aggregate liability any one *period of insurance* provided under this Extension of Cover will not exceed \$500,000.

### 3.5 Tax Audit

We will pay to or on behalf of the *institution*, necessary *tax audit costs* incurred by the *institution* directly in connection with a *tax audit notice*, provided that the *tax audit notice* was first received by the *institution* during the *period of insurance* or within the *extended reporting period* (if applicable).

Our total aggregate liability any one *period of insurance* provided under this Extension of Cover will not exceed \$500,000.

## 4. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section*:

### 4.1 Other cover sections

to make any payment for *financial loss* including *defence costs* (unless otherwise stated) in connection with any *claim* made against the *institution* which is covered, or would be covered but for the operation of any exclusion under Sections 3, 4, 5 or 6.

### 4.2 Tax audit costs

to make any payment for *tax audit costs* in connection with any *tax audit notice* made against the *institution* in connection with:

- 4.2.1 any refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office for the provision of documents or information from the *institution*;
- 4.2.2 any matter in respect to customs legislation;
- 4.2.3 any tax audit conducted or related to income derived outside of Australia and/or New Zealand; or
- 4.2.4 *tax audit costs* incurred after the completion of the tax audit or *investigation*.

The General Exclusions also apply to this *cover section*.

# Section 3 – Employment Practices Liability

## Introduction

This *cover section* automatically forms part of your policy.

### 1. Insuring Clause

We will pay to or on behalf of the *institution* any *financial loss* arising from any *employment practices claim*, first made against the *institution* during the *period of insurance* or any *extended reporting period* (if applicable).

### 2. Definitions

The following Definitions and the General Definitions apply to this *cover section*.

#### 2.1 Employee entitlements

*employee entitlements* means employee benefits arrangements of any kind (whether during or post employment) including but not limited to:

- 2.1.1 provisions for unemployment, redundancy, retirement, sickness, disability, maternity leave, paternal leave, adoption leave, annual leave, long service leave, compassionate leave or personal leave;
- 2.1.2 entitlements under any statute or *industrial instrument* including the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay, time in lieu, allowance and penalties alleged to be due and owing;
- 2.1.3 accident, life, medical, disability or other welfare plans, including insurance of any kind;
- 2.1.4 superannuation, retirement or pension contributions, benefits and entitlements; or
- 2.1.5 profit sharing, stock benefits or deferred compensation plans.

#### 2.2 Discrimination

*discrimination* means violation of a person's civil rights with respect to such person's race, national origin, religion, gender, marital status, age, sexual orientation or preference, disability, genetic predisposition, or any other protected class or characteristic established by any jurisdiction's federal, state or local statutes, rules or regulations, or under any constitutional law or case law authority.

#### 2.3 Industrial instrument

*industrial instrument* means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia, including without limitation the Fair Work Australia and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any law in any other jurisdiction.

#### 2.4 Sexual harassment

*sexual harassment* means any unwelcome sexual conduct, advances, contact or communications including requests for sexual favours.

### 3. Extension of Cover

Cover is automatically provided for the Extension of Cover described below for this *cover section*. The Extension of Cover does not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

#### 3.1 Third party liability

We will pay to or on behalf of the *institution* any *financial loss* arising out of any *sexual harassment* or *discrimination claim* brought by any *third party*.

## 4. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for *financial loss* including *defence costs* (unless otherwise stated) in connection with any *employment practices claim* made against the *institution*:

### 4.1 Employee entitlements

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

However, this exclusion does not apply to any *defence costs* incurred by the *institution* with respect to the *employment practices claim*.

### 4.2 Employee reinstatement

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

However, this exclusion does not apply to any *defence costs* incurred by the *institution* with respect to the *employment practices claim*.

### 4.3 Industrial relations

based upon, arising from or attributable to:

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

4.3.2 any collective redundancies or mass-layoffs or any restructure within the *institution* whereby two or more *employees* of the *institution* are made redundant or laid-off.

### 4.4 Modifications

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

However, this exclusion does not apply to any *defence costs* incurred by the *institution* with respect to an *employment practices claim*.

### 4.5 Specified sums under contract

for any sum of money:

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

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

However, this exclusion does not apply to any *defence costs* incurred by the *institution* with respect to an *employment practices claim*.

### 4.6 Worker compensation

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

The General Exclusions also apply to this *cover section*.



# Section 4 – Professional Liability

## Introduction

This *cover section* automatically forms part of your policy.

### 1. Insuring Clause

We will pay to or on behalf of the *insured* any *financial loss* arising from any *claim* based on *civil liability* first made against the *insured* during the *period of insurance* or any *extended reporting period* (if applicable).

### 2. Definitions

The following Definitions and General Definitions apply to this *cover section*.

#### 2.1 Civil liability

*civil liability* means liability of the *insured* for any civil cause of action for compensation or damages, based solely on its provision of, or failure to provide, *professional services*.

#### 2.2 Investigation costs

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

#### 2.3 Joint venture

*joint venture* means any enterprise undertaken jointly by the *institution*, with any third parties.

#### 2.4 Professional services

*professional services* means only the professional services provided by the *insured* in the profession, business or occupation specified in the *schedule*. It does not include the provision of services as a superannuation trustee in any respect, or acting in a capacity as a director or officer.

### 3. Extensions of Cover

These Extensions of Cover are subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise.

#### 3.1 Consultants, subcontractors and agents

We will pay to or on behalf of the *insured* any *financial loss* arising from any *claim* based on *civil liability* resulting from the conduct of any students, consultants, sub-contractors or agents of the *insured* for which the *institution* is legally liable in the provision of the *professional services*.

#### 3.2 Dishonesty

Notwithstanding General Exclusion 3.3.2, 'Conduct', we will pay to or on behalf of the *insured* any *financial loss* arising from any *claim* alleging any actual or alleged criminal, fraudulent, dishonest or malicious act or omission in the provision of the *professional services* by an *employee* or *employees* of the *institution* provided that:

- (a) no indemnity is available to the dishonest *employee(s)* themselves, or at all where the *institution* has knowingly engaged in or condoned such conduct; and
- (b) for the purpose of this clause, employee means a person or persons in the direct service of the *institution*, but excludes any principal or director.

For the purpose of determining whether the *institution* has knowingly engaged in or condoned such conduct, the conduct and knowledge of any past, present or future principal, bursar, director, chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or corporate general counsel (or equivalent position) of the *institution* will be imputed to the *institution*.

If there is an entitlement to payment in respect of *financial loss* under this Extension of Cover and there is also an entitlement to payment in respect of that loss under Section 9, then no cover is provided under this Extension of Cover in respect of that loss.



### 3.3 Investigations

We will pay *investigation costs* to or on behalf of the *insured*, in respect of any *investigation* into conduct allegedly committed by the *insured* in the conduct of the *professional services*:

Cover under this Extension of Cover arises only when, and is in relation only to *investigation costs* incurred after, the *insured* is requested in writing by such *official body* to attend such *investigation*, provided that such request to attend first arises during the *period of insurance* or within the *extended reporting period* (if applicable).

### 3.4 Joint venture

We will pay to or on behalf of the *insured* any *financial loss* arising from any *claim* based on *civil liability* arising from any *joint venture*, but such coverage does not extend to any *joint venture* party(ies) or any vehicle established to conduct, control or manage such *joint venture*.

### 3.5 Loss of documents

Notwithstanding General Exclusion 3.2 'Bodily injury / Property damage', we will:

3.5.1 pay to or on behalf of the *insured* any *financial loss* arising from any *claim* based on *civil liability* for loss, damage or destruction of any documents or computer records, but excluding money, belonging to the *institution* or for which the *institution* is legally responsible, where the loss, damage or destruction occurs in the provision of the *professional services* after the *date of continuous cover*; and

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

However,

- (i) we will only be liable where any such loss, damage or destruction is notified to us within 30 days of discovery by the *insured* (and 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 will not be liable for any *claim* under 3.5.1 or costs and expenses under 3.5.2 directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused.

## 4. Optional Extension of Cover

This Optional Extension only applies if shown as included in the *schedule* and is subject to the terms, conditions and limitations of this policy. This Optional Extension of Cover does not increase our *limit of liability* or *combined limit of liability*.

### 4.1 Reinstatement

In the event that the *combined limit of liability* under this policy has been entirely exhausted during the *period of insurance*, by *claims*, *financial loss* or payments under an Extension of Cover paid or which we have agreed to pay, the *limit of liability* for this *cover section* only will be reinstated in the same amount, once only, conditional upon the following:

- 4.1.1 the reinstated *limit of liability* will only apply to *claims*, *financial loss* or payments under an Extension of Cover under this *cover section* which do not arise out of and do not have any connection with the source or originating cause of any of the *claims*, *financial loss* or payments already paid or payable out of the original *combined limit of liability*;
- 4.1.2 all other terms, conditions, exclusions and limitations of the policy will continue to apply, in the same manner, in respect of *claims*, *financial loss* or payments to which the reinstated *limit of liability* applies;
- 4.1.3 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 *combined 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*, *financial loss* or payments already paid or which the insurers in question have agreed to pay;
- 4.1.4 the request for *reinstatement* must be made by the *insured*, and all requirements relating to it be satisfied by it, before the expiry of the *period of insurance*; and
- 4.1.5 there will be no reinstatement at all of any *sub-limit*.

## 5. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for:

### 5.1 Aggravated, punitive or exemplary damages

aggravated, punitive or exemplary damages.

### 5.2 Employer's liability

5.2.1 any *claim* for any *bodily injury*, sickness, disease, nervous shock, mental disorder or death of any *employee* of the *insured* or for the destruction or loss or damage to any tangible property belonging to an *employee*, including loss of use thereof, arising in the course of their employment; or

5.2.2 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.

### 5.3 Criminal penalties, fines or sanctions or civil penalties

criminal or civil penalties, fines or sanctions.

The General Exclusions also apply to this *cover section*.

# Section 5 – Superannuation Trustee’s Liability

## Introduction

This *cover section* automatically forms part of your policy. The General Definitions apply to this *cover section*.

### 1. Insuring Clause

We will pay to or on behalf of any *trustee* any *financial loss* arising from any *claim* which alleges a *trustee responsibility breach*, first made against the *trustee* during the *period of insurance* or any *extended reporting period* (if applicable).

### 2. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for *loss* including *defence costs* (unless otherwise stated) in connection with any *claim* made against any *trustee*:

#### 2.1 Failure to fund

based upon, arising from or attributable to:

- 2.1.1 any failure to fund the *trust* in accordance with its establishing trust deed or other instrument;
- 2.1.2 any failure to collect contributions owing to the *trust*, or any return or repayment of contributions, benefits or trust assets to contributing employers;
- 2.1.3 any past, present or future benefits actually payable by the *trust* to a beneficiary or member; or
- 2.1.4 in respect of liability for self-insurance by the *trust* of death and disability benefits.

The General Exclusions also apply to this *cover section*.

# Section 6 – Internet Liability

## Introduction

This cover section automatically forms part of your policy.

### 1. Insuring Clause

We will pay to or on behalf of the *institution* any *financial loss* arising from any *claim* first made against the *institution* during the *period of insurance* or the *extended reporting period* (if applicable), which is a direct result of an *electronic publishing claim*.

### 2. Definitions

The following Definitions and the General Definitions apply to this cover section.

#### 2.1 Electronic data

*electronic data* means information that exists in electronic form, including *personal information*. *Electronic data* does not include *software*.

#### 2.2 Electronic publishing

*electronic publishing* means the reproduction, publication, dissemination, transmission or release of information, including *electronic data*, image files, audio files or text, on the *insured's* internet website; provided that such information must have been developed by or for the *insured* or acquired by the *insured* for its use.

#### 2.3 Electronic publishing claim

*electronic publishing claim* means any actual, attempted or alleged:

- 2.3.1 libel, slander, trade libel or disparagement resulting from the *electronic publishing* of material that defames a person or organisation or disparages a person's or organisation's goods, products or services;
- 2.3.2 plagiarism, false light or false advertising resulting from the *insured's electronic publishing* activities;
- 2.3.3 violation of the right of privacy or seclusion or right of publicity of any person other than an *insured person* or an *employee* resulting from the *electronic publishing* of material that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
- 2.3.4 infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including, without limitation, infringement of domain name, deep-linking or framing, resulting from the *insured's electronic publishing* activities; or
- 2.3.5 unauthorised use of titles, formats, performances, style, characters, plots or other protected material resulting from the *insured's electronic publishing* activities.

#### 2.4 Personal information

*personal information* means any information from which an individual may be uniquely and reliably identified or contacted, including an individual's name, telephone number, social security number, medical or healthcare data or other protected health information, driver's license number or state identification number, account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non public personal information as defined in Privacy Act 1988 (Cth).

*Personal information* does not include information lawfully available to the general public for any reason, including information from federal, state, or local government records.

#### 2.5 Software

*software* means operations and applications, codes and programs by which *electronic data* are electronically collected, transmitted, processed, stored or received. *Software* does not include *electronic data*.

### 3. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for any *claim* in connection with an *electronic publishing claim* made against the *institution*:

#### 3.1 Fitness for purpose

based upon, arising from, attributable to or as a consequence of any actual or alleged inaccurate or misleading description of the price or quality or fitness of purpose of any product, including the failure of any product to conform with any advertised standard of quality, performance or fitness for purpose or otherwise to satisfy any standard of quality, performance or fitness or purpose.

#### 3.2 Fraud

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

3.2.1 theft of computer or video game points, earnings awards or other intangible property; or

3.2.2 uploading or downloading of digitised music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games.

#### 3.3 Restrictive trade practices

based upon, arising from, attributable to or as a consequence of any actual or alleged unfair competition, deceptive or unfair trade practice, consumer fraud, price fixing, restraint of trade, monopolization, consumer fraud or other violation of the Competition and Consumer Act 2010 (Cth), or any other federal, state, local, foreign or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade.

#### 3.4 Royalties and Fees

based upon, arising from, attributable to or as a consequence of licensing fees or royalties ordered, directed or agreed to be paid by the *insured* pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement, for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name, or other protected intellectual property.

#### 3.5 Spam Act

based upon, arising from, attributable to or as a consequence of any unsolicited electronic dissemination of faxes, emails, or other communications to multiple actual or prospective customers by the *insured* or any other *third party*, including actual or alleged violations of:

3.5.1 the Spam Act 2003 (Cth), taking into account amendments within the Competition and Consumer Act 2010 (Cth);

3.5.2 the United States Telephone Consumer Protection Act (TCPA) or the Canadian Spam Act of 2003, including any amendment of or addition to such law; or

3.5.3 any other federal, state or foreign anti-spam statute or federal, state or foreign statute, law, ordinance or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information in any foreign jurisdiction.

#### 3.6 Trade secrets

based upon, arising from, attributable to or as a consequence of any patent infringement or theft, copying, misappropriation, display or publication of any trade secret, or any infringement of copyright, trademark or service mark of software or software technology, or upon data, sounds, images or similar matter incorporated into or otherwise part of the *insured's* products.

The General Exclusions also apply to this *cover section*.

# Section 7 – Supplementary Legal Expenses

## Introduction

This *cover section* only forms part of your policy when Section 7 – ‘Supplementary Legal Expenses’ is shown as included and with a *limit of liability* or *combined limit of liability* for this *cover section* specified in the *schedule*.

## 1. Insuring Clauses

We will pay for any *supplementary legal expenses loss* which arises from or is a consequence of any *claim* first made against the *insured* during the *period of insurance* or the *extended reporting period* (if applicable), incurred on behalf of:

1.1 any *insured person* by reason of:

- 1.1.1 any *wrongful act* committed, attempted or allegedly committed or attempted by an *insured person*; or
- 1.1.2 an *insured person’s* attendance at any prosecution, inquiry (criminal or otherwise), *investigation*, examination or other proceedings before a court or *regulatory authority* or *tribunal* at the direction of that court or *regulatory authority* or *tribunal*,

but only when the *insured person* may not be indemnified by the *institution*;

1.2 the *institution* by reason of:

- 1.2.1 any *wrongful act* committed, attempted or allegedly committed or attempted by an *insured person*; or
- 1.2.2 an *insured person’s* attendance at any prosecution, inquiry (criminal or otherwise), *investigation*, examination or other proceedings before a court or *regulatory authority* or *tribunal* at the direction of that court or *regulatory authority* or *tribunal*,

but only when the *institution* is entitled to indemnify the *insured person*; or

1.3 the *institution* in relation to its attendance at any prosecution, inquiry (criminal or otherwise), *investigation*, examination or other proceedings before a court or *regulatory authority* or *tribunal* at the direction of that court or *regulatory authority* or *tribunal*.

## 2. Definitions

The following Definitions and the General Definitions apply to this *cover section*. If a term is defined in this *cover section* and in the General Definitions, then the definition in this *cover section* will prevail for the purpose of this *cover section*.

### 2.1 Claim

*claim* means any:

- 2.1.1 writ, summons, application or other originating legal or arbitral proceedings, cross claim or counter claim issued against or served upon any of the parties insured under this *cover section*;
- 2.1.2 written demand communicated to any of the parties insured under this *cover section* under any circumstance or by whatever means; or
- 2.1.3 notice by which a court or *regulatory authority* or *tribunal* directs any of the parties insured under this *cover section* to appear before that court or *regulatory authority* or *tribunal*.

### 2.2 Deductible

*deductible* means in respect of:

- 2.2.1 the *institution*, the amount shown in the *schedule*;
- 2.2.2 the *insured persons*, the amount shown in the *schedule*.

## 2.3 Fees and expenses

*fees and expenses* means any:

2.3.1 *defence costs*;

2.3.2 costs incurred by other parties insofar as any *insured person* or the *institution* is held liable to pay such costs by reason of an order of any arbitrator, court, *regulatory authority, tribunal*, board, professional or *official body*, institution or otherwise becomes liable to pay the costs under a settlement made with the other party; and

2.3.3 fees, expenses and other disbursements reasonably incurred in appealing or resisting an appeal against the judgement of a relevant arbitrator, court, *regulatory authority, tribunal*, board, professional or *official body* or institution as the case may be.

## 2.4 Supplementary legal expenses loss

*supplementary legal expenses loss* means the total amount of *fees and expenses* on account of each *claim*.

*Supplementary legal expenses loss* does not include damages, compensation (other than *fees and expenses*), fines, penalties imposed by law, civil penalties, liability for tax, punitive or exemplary damages or matters uninsurable under law pursuant to which this policy is construed.

## 2.5 Tribunal

*tribunal* means and includes any board, professional or *official body* or institution of any of the parties insured under this *cover section*.

## 3. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for:

### 3.1 Commercial disputes

*supplementary legal expenses loss* in connection with any *claim* made against the *insured* based upon, arising from or attributable to a commercial or contractual dispute.

However this Exclusion will not apply to any *supplementary legal expenses loss* by reason of the defence of any *claim* or legal proceedings made or commenced against an *insured person* and/or the *institution* by or on behalf of any student enrolled at the *institution*.

### 3.2 Criminal prosecutions solicited by the insured

*supplementary legal expenses loss* in connection with any criminal prosecution that has been deliberately or intentionally solicited by the *insured*, unless the action is required to discharge duties of the director, officer or *employee* as defined in the relevant Companies and Securities Legislation.

### 3.3 Employment practices claims

*supplementary legal expenses loss* in connection with any *employment practices claim*.

### 3.4 Fines and penalties

any damages, compensation (other than *fees and expenses*), fines or penalties imposed by law, civil penalties, liability for group or sales tax or punitive or exemplary damages.

### 3.5 Government Acts

*supplementary legal expenses loss* in connection with any *claim* made against the *institution* under any *consumer protection act* or the Australian Taxation System (Goods and Services Tax) Act 1999 (Cth).

However this Exclusion will not apply to Insuring Clause 1.3.



### 3.6 Personal injury

*supplementary legal expenses loss* in connection with any *claim* made against the *insured* or the *institution* arising out of injury, disease or death of any of the *institution's employees* or of any person who is deemed under any applicable law to be an *employee* of the *institution*.

However this exclusion will not apply to any prosecution, inquiry, *investigation*, examination or proceeding as stated in Insuring Clauses 1.1 and 1.3.

The General Exclusions also apply to this *cover section*.

## 4. Special Conditions

The following Special Conditions apply to this *cover section*.

### 4.1 Other cover sections

If a *loss* is covered under both this *cover section* and under another *cover section* of the policy then such *loss* will be covered under that other *cover section* and not under this one.

### 4.2 Jurisdiction

Coverage under this *cover section* is limited to *claims* made, commenced or brought in Australia and/or New Zealand only.

# Section 8 – Statutory Liability

## Introduction

This *cover section* only forms part of your policy when Section 8 – ‘Statutory Liability’ is shown as included and with a *limit of liability* for this *cover section* specified in the *schedule*.

## 1. Insuring Clause

We will pay to or on behalf of the *insured or employee* any *statutory liability loss* arising from any *claim* which alleges a *wrongful breach*, first received by the *insured or employee* during the *period of insurance* or any *extended reporting period* (if applicable).

## 2. Definitions

The following definitions apply to the words used in this *cover section*. Please refer to the additional Definitions applicable to all *cover sections*.

### 2.1 Claim

*claim* means any written notice from a *regulatory authority*, received by the *insured or employee* which alleges a *wrongful breach* and/or that the *insured or employee* is liable to pay a *penalty*.

### 2.2 Penalty

*penalty* means any monetary sum payable by the *insured or employee* to any *regulatory authority* pursuant to any *Act* for a *wrongful breach* by the *insured or employee* but excluding any:

- 2.2.1 amounts payable as compensation;
- 2.2.2 compliance, remedial, reparation or restitution costs;
- 2.2.3 damages, including any exemplary or punitive damages;
- 2.2.4 consequential economic *loss*;
- 2.2.5 legal costs and associated expenses;
- 2.2.6 penalty which is uninsurable by law.

Notwithstanding clause 2.2.5, we will pay any reasonable legal costs and associated expenses payable by the *insured or employee* to any *regulatory authority* upon the imposition of a *penalty* covered by this *cover section*.

Provided that where the proceedings that lead to the imposition of the *penalty* also include proceedings in respect of any of the matters set out in clauses 2.2.1 to 2.2.4, we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in 2.2.1 to 2.2.4.

### 2.3 Statutory liability loss

*statutory liability loss* means any *penalty* and *defence costs*.

### 2.4 Workplace audit

*workplace audit* means those audits undertaken by a *workplace regulatory authority*.

### 2.5 Workplace regulatory authority

*workplace regulatory authority* means a person or entity appointed, constituted or acting under a delegation pursuant to any Commonwealth, State or Territory workplace health and safety legislation or equivalent *Act* for the purposes of enforcement of such *Act* or another *Act*.

### 3. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. The Extensions of Cover do not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

#### 3.1 Outside entity executive

We will pay on behalf of any *outside entity executive* subject to the terms, conditions and limitations of this *cover section*, *statutory liability loss* arising from any *claim* based on any *wrongful breach* first made against him or her during the *period of insurance* for a *wrongful breach* committed or attempted by or allegedly committed or attempted whilst serving or acting in his or her capacity as an *outside entity executive with an outside entity*.

Without detracting from the operation of General Condition 4.14 'Other insurance and Non-Accumulation', this Extension of Cover is available only as specific excess cover over and after exhaustion of any other applicable, valid and collectible policy of insurance and also any indemnification permitted or required to be paid by such *outside entity*.

#### 3.2 Workplace audits

We will pay for the costs necessarily and reasonably incurred by the *institution* in connection with a *workplace audit* which commenced and was notified to us during the *period of insurance*.

Provided that:

- 3.2.1 the *institution* gives us written notice that a *workplace audit* is to be conducted by a *workplace regulatory authority* within 30 days of the *institution* being advised. The written notice to us must include a copy of the *workplace audit* notice from the *workplace regulatory authority* that clearly identifies the type of *workplace audit* to be conducted; or
- 3.2.2 where a *workplace audit* has commenced in the absence of any notification document being issued by the *workplace regulatory authority*, the *institution* must provide us with details of the date of the first visit by the officer of the *workplace regulatory authority* together with the officer's contact details within 30 days of the first visit; and
- 3.2.3 we will only pay the *institution* once we receive final written confirmation to the *institution* from the *workplace regulatory authority* that the *workplace audit* has been completed; and
- 3.2.4 the *sub-limit* for this extension of cover is \$25,000 or the amount specified in the *schedule*, for all workplace audit costs payable and in the aggregate for any one *period of insurance*.

### 4. Exclusions

The following Exclusions apply to this *cover section* and we will not be liable under this *cover section* to make any payment for *statutory liability loss* including *defence costs* or workplace audit costs (unless otherwise stated) in connection with any *claim* made against an *insured or employee*:

#### 4.1 Continuing breaches

based upon, arising out of, because of, attributable to or as a consequence of civil penalties of any kind under any legislation that accrue as a result of continuing breaches.

#### 4.2 Corporations / Commerce Acts

based upon, arising from or attributable to:

- 4.2.1 a *wrongful breach* of any *consumer protection act*. Exclusion 4.2.1 does not apply to *directors or officers* or *employees* for *claims* arising in the performance of their duties as *directors or officers* and *employees*;
- 4.2.2 for any *statutory liability loss* or part of any *statutory liability loss* which is attributable to the period after the *insured* knew (or ought reasonably to have known) that its conduct was a *wrongful breach*;

- 4.2.3 any contravention of sections 182, 183, 588G, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections;
- 4.2.4 any contravention of sections 78, 80, 83 or 89 (3) (b) of the New Zealand Commerce Act 1986 and any amendment, consolidation or re-enactment of any of those sections; or
- 4.2.5 a *wrongful breach* of any of the following New Zealand Acts; Arms Act 1983, Aviation Crimes Act 1972, Crimes Act 1961, Proceeds of Crime Act 1961, Summary Offences Act 1981, Transport Act 1962, Transport (Vehicle and Driver Registration and Licensing) Act 1986.

However this exclusion will only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the *insured or employee*.

#### 4.3 Taxes

based upon, arising from or attributable to a *wrongful breach* by the *insured or employee* in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

#### 4.4 Vehicle operation

based upon, arising from or attributable to:

- 4.4.1 a *wrongful breach* relating to the regulation of road rules for drivers of vehicles;
- 4.4.2 a *wrongful breach* relating to the regulation of air or marine traffic.

#### 4.5 Wilful and intentional breaches

based upon, arising from or attributable to:

- 4.5.1 any wilful, intentional or deliberate *wrongful breach*;
- 4.5.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
- 4.5.3 any *wrongful breach* caused by gross negligence or recklessness by the *insured or employee*;

However this exclusion will only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the *insured or employee*.

The General Exclusions also apply to this *cover section*.

## 5. Special Conditions

The following Special Conditions apply to this *cover section*. Please refer to the additional General Conditions applicable to all *cover sections*.

### 5.1 Notices under Acts

The *insured or employee* must comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate *regulatory authority* under any Act within the time specified or if no time is specified, within a reasonable time.

### 5.2 Jurisdiction and territorial scope

Coverage under this *cover section* is limited to *wrongful breaches* occurring, *statutory liability loss* incurred or *workplace audits* in Australia and/or New Zealand only.

### 5.3 Other cover sections

If a *loss* is covered under both this *cover section* and under another *cover section* of the policy then such *loss* will be covered under that other *cover section* and not under this one.

# Section 9 – Commercial Crime

## Introduction

This *cover section* only forms part of your policy when Section 9 – ‘Commercial Crime’ is shown as included and with a *limit of liability* for this *cover section* specified in the *schedule*.

## 1. Insuring Clause

We will pay to or on behalf of the *institution* any *crime claim* for any *crime loss* sustained by an *insured* as a direct result of a *criminal act* provided the *crime loss* is first *discovered* during the *period of insurance* or any *extended discovery period* (if applicable).

## 2. Definitions

The following Definitions apply to the words used in this *cover section*. Please refer to the additional General Definitions applicable to all *cover sections*.

### 2.1 Client

*client* means a customer of an *insured* to whom such *insured* provides goods or services under a written contract, for a fee or other monetary consideration.

### 2.2 Computer fraud

*computer fraud* means *crime loss* of the *institution's* money, *securities* or *property* due to any fraudulent or dishonest misuse or manipulation by a *third party* of the computer systems, programs or funds transfer systems owned or operated by the *insured*.

### 2.3 Corporate transaction

*corporate transaction* means any transaction involving the purchase or sale of shares, equity, debt or assets of any entity.

### 2.4 Counterfeit or counterfeiting

*counterfeit* or *counterfeiting* means the intentional imitation of any currency notes or coins such that an *insured* is deceived on the basis of the quality of the imitation to believe that the imitation is the authentic original currency.

### 2.5 Credit card fraud

*credit card fraud* means the *forgery* or alteration of, on or in, any written instrument required in connection with any credit card issued to an *insured*, to any *director* or *officer*, or any partner or to any *employee* of the *insured*.

### 2.6 Crime investigation costs

*crime investigation costs* for the purpose of this *cover section* means all reasonable and necessary costs incurred by the *insured* to establish the amount of a *crime loss* (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, cost of their time or costs or overhead of any *insured*) with our written consent, such consent not to be unreasonably withheld or delayed, in connection with a covered *crime loss* to be paid under this *cover section* where the *crime loss* is excess of the applicable *deductible*.

### 2.7 Crime loss

*crime loss* means the direct financial *loss* of any *property*, money or *securities* sustained by an *insured* as a direct result of a *criminal act* and will include *crime investigation costs* and *data reconstitution costs*.

### 2.8 Criminal act

*criminal act* means any *internal crime* or *external crime*.

## 2.9 Data reconstitution costs

*data reconstitution costs* means reasonable costs (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, and the cost of their time or costs or overhead of any *insured*) incurred in reproducing or amending the software programs or systems where such reproduction or amendment is necessary to correct damage caused to the programs or to amend the security codes following a *criminal act* in respect of the use of the computer hardware or software programs or systems owned and operated by the *insured* and which was the subject of a *crime loss* under this *cover section*.

## 2.10 Discovered or discovery

*discovered* or *discovery* means the moment on which the *insured* or any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof, not in collusion with any person(s) committing the *criminal act*, becomes aware of any fact or facts that give reasonable grounds to believe that *crime loss* as insured under this *cover section* has been or may be incurred even though the exact amount or details of the *crime loss* may not then be known.

## 2.11 External crime

*external crime* means any fraudulent or dishonest single, continuous or repeated act(s) or a series of acts committed by a *third party* of:

2.11.1 *theft*;

2.11.2 *forgery*;

2.11.3 *fraudulent alteration*;

2.11.4 *counterfeiting*;

2.11.5 *computer fraud*;

2.11.6 *fraudulent induced transfer* only if Extension of Cover 3.9 'Fraudulent impersonation' of this policy is covered; or

2.11.7 crime not otherwise insured or excluded under this definition where the *third party* obtained *improper financial gain* and intended to cause the *insured* a *crime loss*.

*external crime* in no event means:

(i) *corporate transaction*;

(ii) *voluntary exchange* or *purchase* unless covered under *forgery*, *fraudulent alteration*, *counterfeiting* or *computer fraud*; or

(iii) *extortion*, except where, prior to the surrender of the money, *securities*, property or provision of other advantage, the person receiving the threat has made a reasonable effort to report the threat to another *employee* or *director* or *officer*, and the *insured* has made a reasonable effort to report the threat to the relevant authority and made reasonable efforts to comply with all reasonable directions of that relevant authority.

## 2.12 Extended discovery period

*extended discovery period* means a period of 365 days.

## 2.13 Extortion

*Extortion* means any attempt to obtain money, *securities*, property, or other advantage from an *insured* by way of a threat to inflict personal injury to *employees* or *directors* or *officers* or their family members, or to damage or destroy any tangible property (including computer systems, software or programs) owned by the *insured* or for which the *insured* is legally liable.

## 2.14 Financial instrument

*financial instrument* means cheques, drafts or similar written promises, orders or directions to pay a certain sum of money that are made, drawn by or drawn upon an *insured* or by anyone acting or purporting to be acting as the *insured's* agent.

## 2.15 Forgery

*forgery* means:

2.15.1 the signing by hand of another natural person's name; or

2.15.2 the endorsing or amending by hand without authority,

of any cheque, draft, promissory note or bill of exchange given or received by an *insured* with the intent to deceive in consequence of which the *insured* has acted or transferred funds or goods.

Mechanically or electronically produced or reproduced signatures will be treated as hand written signatures.

## 2.16 Fraudulent alteration

*fraudulent alteration* means a material alteration to any *financial instrument* for a fraudulent or dishonest purpose by a person other than the person who was authorized to sign such *financial instrument*.

## 2.17 Fraudulent induced transfer

*fraudulent induced transfer* means loss of money, *securities* or *property*, on deposit in the *institution's* own account, resulting directly from a transfer resulting from the good faith reliance upon a fraudulent *transfer instruction*:

2.17.1 transmitted to the *institution* or *employee* of the *institution* via an electronic mail, telefacsimile, telephone or other written instruction received by the *institution* or *employee* of the *institution* that is not in collusion with the sender of the fraudulent instruction; and

2.17.2 that purports, and reasonably appears, to have originated from:

(a) an *employee* of the *institution* specifically authorised by the *institution* to make such instruction; or

(b) a *vendor* authorised by the fraudulent *transfer instruction*;

but the sender of the fraudulent instruction was not, in fact, such *employee* or *vendor* but someone impersonating such and the impersonated *employee* or *vendor* had no knowledge of nor consented to such fraudulent *transfer instruction* received by the *institution*; and

2.17.3 containing a misrepresentation of material fact reasonably relied upon that directs the *institution* or *employee* of the *institution* to transfer, pay, or to change the method, destination or account for payments to such *employee* or *vendor* referenced in item 2.17.2 above.

## 2.18 Improper financial gain

*improper financial gain* means any person gaining any *property*, money or *securities* from the *insured* to which that person was not legally entitled. *Improper financial gain* in no event includes salaries, bonuses, fees, commissions, promotion, emoluments or other remuneration.

## 2.19 Internal crime

*internal crime* means any fraudulent or dishonest single, continuous or repeated act(s) or series of acts committed by an *employee* acting alone or in collusion with others to cause a *crime loss* to the *insured* or to obtain an *improper financial gain* from the *insured*.

In respect of any *internal crime* committed by any *employee* who is engaged in trading or dealing in stocks, shares, equities, bonds, *securities*, valuable papers, commodities, foreign exchange, derivatives, loans, transactions in the nature of a loan or other extension of credit and the like, the *insured* must prove that such *internal crime* was committed by the *employee* causing the *insured* to suffer such *crime loss* or to obtain an *improper financial gain* for that *employee* or for any other individual or organisation.

## 2.20 Loss investigator

*loss investigator* means a Zurich appointed investigator and/or forensic expert.

## 2.21 Preliminary expenses

*preliminary expenses* means up to 8 hours of time spent by a *loss investigator* assisting the *insured* with the *investigation* of its *crime loss* and the production of its proof of loss.



## 2.22 Property

*property* means tangible property of an *insured* other than money or *securities*.

## 2.23 Securities

*securities* for the purpose of this *cover section* means any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or *property*. *Securities* does not include money or *property*.

## 2.24 Superannuation fund

*superannuation fund* means any superannuation fund established and sponsored solely by the *insured* and solely to provide retirement benefits to the *insured's* past, present or future *employees, directors* and *officers* or their respective beneficiaries.

## 2.25 Theft

*theft* means the unlawful permanent deprivation of money, *securities* or property, whether from the *insured's* premises or in transit or otherwise. For the avoidance of doubt, *theft* includes robbery.

## 2.26 Transfer instruction

*transfer instruction* means an instruction directing the *insured* to transfer money, *securities* or *property*.

## 2.27 Vendor

*vendor* means any entity or natural person from whom the *insured* purchases goods or services under a written contract, for a fee or other monetary consideration. However, *vendor* does not include any *financial institution*, asset manager, broker-dealer, armoured motor vehicle company, or any similar entity.

## 2.28 Voluntary exchange or purchase

*voluntary exchange* or *purchase* means the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of money, *securities* or *property* in any exchange or purchase.

# 3. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below for this *cover section*. Each Extension of Cover does not increase our *limit of liability* or *combined limit of liability*, unless expressly stated otherwise. Please refer to the additional General Extensions of Cover applicable to all *cover sections*.

## 3.1 Care, Custody and Control

We will indemnify the *institution* for the *crime loss* of *property*, money or *securities* under the care, control and custody of an *insured* and for which such *insured* is legally liable.

For the purposes of this Extension of Cover only, the definition of *property* is amended as follows:

'*property*' means any tangible property other than money or *securities*.

## 3.2 Client liability

We will indemnify the *institution* for the *crime loss* sustained by a *client* from *improper financial gain* committed by an *employee* not in collusion with such *client's* directors or employees, where such *crime loss* is *discovered* during the *period of insurance* or the *extended discovery period* (if applicable).

## 3.3 Contractual penalties

We will indemnify the *institution* for any contractual penalty assumed by and enforced against an *insured* under a written contract, resulting directly from a *crime loss* covered under this *cover section*.

Our total aggregate liability provided under this Extension of Cover will not exceed \$100,000 or the amount specified in the *schedule*.

### 3.4 Credit card fraud

We will indemnify the *institution* for *crime loss* suffered by an *insured* resulting from *credit card fraud* committed by a *third party* which *crime loss* is *discovered* during the *period of insurance* and the *extended discovery period* (if applicable).

### 3.5 Crime investigations costs

We will indemnify the *institution* for *crime investigation costs* incurred by an *insured*, which are directly related to a *crime loss* covered under this *cover section*.

Our total aggregate liability provided under this Extension of Cover will not exceed \$100,000 or the amount specified in the *schedule*, which is in addition to the *limit of liability* for this *cover section*.

### 3.6 Data reconstitution costs

We will indemnify the *institution* for reasonable *data reconstitution costs*.

### 3.7 Erroneous fund transfer

We will indemnify the *institution* for *crime loss* resulting from unlawful taking by a *third party* of money or *securities* erroneously directed or erroneously transferred by an *insured*.

### 3.8 Extended discovery period

If this *cover section* upon termination is neither renewed nor replaced by any other policy covering the same or a similar risk, the *policyholder* has the right to a single *extended discovery period* subject to payment of the additional premium required by us. Any *crime loss discovered* during such *extended discovery period* and notified to us in accordance with Special Condition 5.1, 'Discovery' of this *cover section*, will be considered for cover, but only with respect to *criminal acts* committed prior to the termination date of the *period of insurance*. This *extended discovery period* will not apply in the event of cancellation of this policy due to the non-payment of the premium.

The right to the single *extended discovery period* will terminate unless written notice is given to us by the *policyholder* within thirty (30) days of the effective date of the non-renewal of this policy. Once the *extended discovery period* has been elected by the *policyholder* the entire premium for the *extended discovery period* will be deemed earned at its commencement.

### 3.9 Fraudulent impersonation

We will indemnify the *institution* for *crime loss* caused by *fraudulent induced transfer* first sustained by the *institution* and *discovered* during the *period of insurance* or any *extended discovery period* (if applicable).

The maximum that we will pay in the aggregate for such *fraudulent induced transfer* is the 'Fraudulent impersonation' Transfer *sub-limit* of liability stated in the *schedule*.

### 3.10 Loss investigator

We will pay the *preliminary expenses* of a *loss investigator* on behalf of the *institution*, following notification by an *insured* of its discovery of a *crime loss* in accordance with Special Condition 5.1, 'Discovery' of this *cover section*. The *insured* may request the appointment of a *loss investigator* to assist with the *investigation* of its *crime loss* and production of its proof of loss. It is the right and duty of Zurich and not of the *insured* to appoint the *loss investigator*.

Following the exhaustion of the *preliminary expenses* of the *loss investigator*, if the *insured* continues the retainer of the *loss investigator*, the costs of the *loss investigator* may be considered under Extensions of Cover 3.5 'Crime investigation costs' subject to all relevant terms, conditions and limitations noted therein.

## 4. Exclusions

The following Exclusions apply to this *cover section* and We will not be liable under this *cover section* to make any payment for *crime loss* in respect of any:

### 4.1 Consequential loss

consequential loss directly or indirectly arising from or in connection with any *crime loss*, unless covered under Extension of Covers 3.5 'Crime investigation costs' or 3.6 'Data reconstitution costs'.

### 4.2 Fire

*crime loss* caused by any fire.

### 4.3 Fraudulent induced transfer

*crime loss* caused by, arising out of directly or indirectly from *fraudulent induced transfer*, unless such *crime loss* is covered under Extension of Cover 3.9 'Fraudulent impersonation'.

### 4.4 Intellectual property rights and trade secrets

*crime loss* of or arising from the accessing of any confidential information including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods, except to the extent that any such information is used to support or facilitate the committing of a *criminal act* covered by this *cover section*.

### 4.5 Kidnap and Ransom

*crime loss* arising from or in connection with kidnap, ransom or any threat thereof.

### 4.6 Known criminal acts

*crime loss* caused by any *employee* whom the *insured* was aware had previously committed a *criminal act* before or after the date of commencement of employment by the *insured*.

### 4.7 Specific documents

*crime loss* in connection with the *forgery*, *counterfeit* or *fraudulent alteration* of, on or in, any account receivable, or assignments thereof, bills of lading, warehouse or trust receipts, or receipts serving a similar purpose.

However, this exclusion only applies to *external crime*.

### 4.8 Trade finance and Trade loans

*crime loss* resulting from the full or partial non-payment of or default under any:

4.8.1 credit agreement, extension of credit or hire purchase agreement;

4.8.2 loan or transaction of the nature of a loan;

4.8.3 lease or rental agreement; or

4.8.4 invoice, account, agreement or any other evidence of debt.

However, this exclusion only applies to *external crime* and then will not apply to any *crime loss* where the *insured* has relied or acted upon any document that contains *forgery*, *fraudulent alteration* or *counterfeiting* of currency notes or coins.

The General Exclusions also apply to this *cover section*.

## 5. Special Conditions

The following Special Conditions apply to this *cover section*. Please refer to the additional General Conditions applicable to all *cover sections*.

### 5.1 Discovery

The *insured* as a condition of coverage must, upon the *discovery* of *crime loss*, provide written notice to us as soon as reasonably practicable following *discovery* but in any event prior to the determination date of the policy or the *extended discovery period*.

Written notice must include but not be limited to full particulars as to dates and persons involved, the date and manner in which the *insured* first became aware of the matters underlying the *crime loss*. All notices under any provision of the policy must be put in writing and supplied as per the General Condition 4.12 'Notification'.

### 5.2 Knowledge

Knowledge possessed or *discovery* made by any person, *institution* or entity forming part of the *insured* or by any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or *discovery* made by all other persons, companies or entities forming part of the *insured*.

### 5.3 Proof of loss

The *insured* must furnish a proof of loss with full particulars of the *crime loss* to Zurich as soon as reasonably practicable after discovery of the *crime loss* in support of its *crime claim* under this *cover section*. A reasonable time frame will be deemed to be 12 months from the date of discovery unless the *insured* indicates to Zurich the reason(s) why it is not possible to provide such proof of loss within 12 months and an extension of time is agreed between Zurich and the *insured*.

The *insured* may not offer, as a part of any proof of loss, any computation or comparison which involves in any manner a profit and loss computation or comparison. The *insured* may offer a comparison between an *insured's* inventory records and actual physical counts of its inventory to prove the amount of *crime loss* only where an *insured* establishes that, wholly apart from such comparison, it has sustained a covered *crime loss* caused by an *employee*.

### 5.4 Territorial scope

Coverage under this *cover section* is for *crime loss* carried out anywhere in the world.

### 5.5 Valuation of losses

#### 5.5.1 Securities

In no event will we be liable in respect of *securities* for more than the actual cash value thereof at the close of business on the business day on which the *crime loss* was *discovered*.

#### 5.5.2 Books of accounts and Records

In the case of *crime loss* of or damage to *property* consisting of books of accounts or other records (other than electronic data) used by the *insured* in the conduct of their business, we will be liable under this *cover section* only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which has been furnished by the *insured* in order to reproduce such books and other records.

#### 5.5.3 Electronic data

In the event that a *crime loss* covered under this *cover section* results in the destruction, erasure or *theft* of electronic data used by the *insured* while such data is stored within the *insured's* computer systems, we will be liable under this *cover section* if such data is actually reproduced and cover hereunder will only apply to the cost of labour for the actual transcription or copying of data, which has been furnished by the *insured* in order to reproduce such electronic data.

#### 5.5.4 Damage to premises

In the case of damage to the premises, we will not be liable for more than the actual diminution in value of the *property*.

#### 5.5.5 Foreign currency

If a foreign currency (being a currency other than the currency in which this *cover section* is written) is involved in a *crime loss* sustained by the *insured* under this *cover section*, then for the purpose of any calculation required in the settlement of a *crime loss*, the rate of exchange is the published rate in the Australian Financial Review on the date of such *discovery*.

#### 5.5.6 Property

In no event will we be liable in respect of *property* (not included in the above), for more than the actual cash value thereof at the time of *crime loss* or for more than the diminution in value of the *property* of such *property* or of replacing same with *property* or material of like quality and value, provided however, the actual cash value of such other *property* held by the *insured* as a pledge, or as collateral for an advance or loan, will be deemed not to exceed the value of the *property* as determined and recorded by the *insured* when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

**Zurich Australian Insurance Limited**

ABN 13 000 296 640, AFS Licence No: 232507  
Head Office: 118 Mount Street, North Sydney NSW 2060

Client enquiries  
Telephone: 132 687  
[www.zurich.com.au](http://www.zurich.com.au)



**ZURICH**<sup>®</sup>