

Zurich Professional Indemnity Insurance

Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act

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

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

1. A *claim* is made against the Insured, by some other person, during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *retro active date* stipulated in the policy *schedule*.

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

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Zurich Professional Indemnity Insurance

About Zurich

Zurich is proud to present the Zurich Professional Indemnity Insurance product.

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZFSA and its subsidiaries are members of the Swiss-based Zurich Group, offering an extensive range of general insurance, investment, life insurance and superannuation products and services for individuals, small to medium sized businesses, larger companies and multi-national corporations.

In Australia, Zurich offers general insurance products covering property, motor, liability, workers compensation, compulsory third party, directors and officers, and professional indemnity risks.

We sometimes capitalise or italicise terms in this document, to show that words are abbreviations or have a particular defined meaning. You should refer to the Definition section of this document on page 5 to obtain the full meaning of such terms.

How to apply for this insurance

Zurich generally distributes its products through licensed insurance brokers or advisers. Insurance brokers or advisers are qualified professionals who are able to access a wide selection of insurance products from which they are able to recommend those best suited to your insurance requirements, after taking into account your individual circumstances.

Throughout this document when we are referring to your insurance broker or adviser, we may simply refer to them as your intermediary. If you are interested in buying this product, you should contact your intermediary. Your intermediary can help you tailor your insurance policy to best suit you. If you then decide to apply for insurance and we accept your proposal, we will issue you with a policy *schedule*, which is a document that sets out the details of your particular insurance policy with us.

If you have any inquiries about this product, you should speak to your intermediary who should be able to provide you with all the information and assistance you require. If you are not satisfied with the information provided by your intermediary you can contact us at the address or telephone number shown on the back cover of this document. However, we are only able to provide general information about the product and are not able to discuss your personal insurance needs.

Our contract with you

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

Your policy is made up of:

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

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

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place.

We reserve the right to change the terms of this product where permitted to do so by law.

Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty under the Insurance Contracts Act 1984 to disclose to us every matter you know, or could reasonably be expected to know, is relevant to our decision whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however, does not require disclosure of a matter:

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

Non-disclosure or Misrepresentation

If you make a misrepresentation to us, or if you do not comply with your duty of disclosure and we issue your policy with terms and conditions that are different to the terms and conditions that would have been issued had there not been any misrepresentation, or your duty of disclosure had been complied with, then:

- we may reduce the cover provided, so that we are placed in the same position as we would have been in, had there not been any misrepresentation and your duty of disclosure had been complied with; and
- we may also cancel your policy; or
- we may treat your policy as if it never existed if the misrepresentation or your non-compliance with your duty of disclosure was fraudulent.

Goods and Services Tax

This policy has provision for payment of Goods and Services Tax (GST):

- by the *insured* in relation to the premium payment;
- by us in relation to claim payments depending on the type of claim.

The GST component of a claim will be settled according to any Input Tax Credit (ITC) the insured is entitled to, for example,

Input Tax Credit	Claim Settlement
0%	Settled inclusive of GST
100%	Settled less GST
70%	Settled less 70% of the GST

The *insured* must advise the correct ITC percentage. Any GST liability arising from the *insured's* incorrect advice is payable by the *insured*. For further information see 'Payments in respect of Goods and Services Tax' on page 13.

Your Privacy

We are committed to protecting the privacy of your personal information and complying with the National Privacy Principles under the Privacy Act 1998 (Cth). For further details on how we do this, please refer to 'Privacy' on page 15.

Confirmation of transactions

Please contact us if, for any reason, you wish to make an enquiry about your policy or obtain confirmation of any policy transaction. You should first check if your intermediary already has the information. Our contact details are on the back cover of this document.

Cooling-off Period

After you apply for a Zurich product and you have received the policy document, you have 21 days to check that the policy meets your needs. Within this time you may cancel the policy and receive a full refund of any premiums paid, unless:

- you have made a claim or become entitled to make a claim under your policy; or
- you have exercised any right or power you have in respect of your policy or the policy has ended.

Your request will need to be in writing and forwarded to us via your intermediary.

You can cancel your policy at any time after the cooling-off period. Please refer to 'Cancellation / termination' in the General Conditions on page 14.

How to make a claim

If you need to make a claim against this policy, please refer to 'Reporting and Notice' on page 14. If you have any queries, please contact your intermediary as soon as possible, or call us on 132 687.

General Insurance Code of Practice

As a member of the Insurance Council of Australia Limited, we subscribe to the General Insurance Code of Practice.

The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The Code aims to:

- constantly improve claims handling in an efficient, honest and fair manner;
- build and maintain community faith and trust in the financial integrity of the insurance industry; and
- provide helpful community information and education about general insurance.

Complaints and Disputes Resolution process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on 132 687. If you are not satisfied with our initial response, you may then use our Internal Disputes Resolution process or, ultimately, our External Disputes Resolution Scheme.

Please refer to 'Complaints and Disputes Resolution process' on page 15 for full details of our process and how you can access it.

Headings

Headings have been included for ease of reference, but do not form part of the policy.

Our Agreement

Subject to payment of the premium set out in the *schedule*, Zurich Australian Insurance Limited, agrees with the *insured* to provide insurance on the terms set out in this policy.

The policy consists of this policy wording, the proposal form, the *schedule* and any Automatic and operative Optional Features and endorsements.

Insuring Clause

Zurich agrees to indemnify the *insured* against *loss* incurred as a result of any *civil liability claim* first made against the *insured* and notified to us during the *period of insurance*, based solely on the *insured's* provision of the *professional services*.

Definitions

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.

Civil liability

civil liability means liability of the *insured* based solely on its provision of, or failure to provide, the *professional services* and which arises pursuant to any civil cause of action for damages or for other monetary payment of a compensatory or restitutionary nature but does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

Claim

claim means:

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served on the *insured*; or
- (b) an oral or written demand for compensation made by a third party against the *insured*.

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim*, for the purposes of the *limit of liability* and the *excess*.

Defence costs

defence costs means:

- (a) reasonable costs, charges or expenses (other than wages, salaries or fees of the *insured*) in investigating, defending and/or settling *claims* or in bringing or defending appeals in connection with them; and
- (b) reasonable costs, charges and expenses of legal representation, not otherwise covered by this policy, of the *insured* at any inquiry, prosecution or hearing while the *insured* is legally compelled to attend and which relates to matters which may give rise to a *claim*, provided that:
 - (i) the requirement that the *insured* attend the inquiry, prosecution or hearing was imposed during the *period of insurance*;
 - (ii) our prior consent to the incurring of any costs, charges or expenses is obtained;
 - (iii) *defence costs* falling within this sub-clause (b) are only indemnifiable up to the sub-limit specified in the *schedule*;

- (iv) the phrase 'inquiry, prosecution or hearing', as employed in this sub-clause (b), does not include a Royal Commission or any audit, prosecution, hearing or other proceeding conducted by the Australian Taxation Office, by the National Crime Commission or by any successor body to it, by any independent commission against corruption or by a parliament or any committee of a parliament;
- (v) the matters which are the subject of the inquiry, prosecution or hearing all took place or are alleged to have taken place after the *retroactive date*;
- (vi) all other terms, conditions and exclusions of the policy otherwise apply as if the inquiry, prosecution or hearing were a *claim*.

Excess

excess means the excess specified in the *schedule*, which shall apply to all *loss*, including *defence costs* (other than those falling within Definition 'Defence costs' sub-clause (b)), arising from a single *claim*, and to all Automatic and any Optional Features (unless otherwise stated therein).

Family member

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

Insolvency

insolvency means in relation to any *insured*:

- (a) being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- (b) having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- (c) being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, under administration, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- (d) being otherwise unable to pay any debts as and when they fall due;
- (e) having anything with the same or similar effect happen under the laws of any jurisdiction.

Insured

insured means:

- (a) the legal entity, partnership, company or corporation specified in the *schedule* as the *insured*;
- (b) the predecessors in business of the *insured* as stated in (a) above;
- (c) any person who is, at inception of the *period of insurance*, a principal, partner or director of the *insured*. It also includes cover in respect of work performed by such person prior to the person joining the *insured* but only where that work was performed as a principal, partner or director of a prior professional practice providing the same *professional services* as the *insured's professional services* and only if such prior practice is declared in the proposal;
- (d) any person who becomes, during the *period of insurance*, a principal, partner or director of the *insured* in respect of the provision of the *insured's professional services* and, if we agree by endorsement to this policy, in respect of work performed by such person as a principal, partner or director of any prior professional practice specified in the endorsement but only to the extent that the prior professional practice provided the same professional services as the *insured's professional services*;
- (e) any former principal, partner or director of the *insured* (in respect of work performed for and on behalf of the *insured* in the provision of the professional services);
- (f) any past or present employee of the insured acting within the scope of their employment in the provision of the *insured's professional services*;
- (g) any *subsidiary company* at inception of this policy or as otherwise agreed by us to be covered under Automatic Feature 10. 'New created / acquired subsidiary company.'

Joint venture partner

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

Limit of liability

limit of liability means the total limit of our liability, under or in connection with this policy, in respect of *loss* in connection with any one *claim* or with all *claims* in the *period of insurance*, as specified in the *schedule*. This is inclusive of *defence costs*. The *limit of liability* is also inclusive of any loss or costs and expenses for which this policy otherwise provides indemnity to the *insured*. Any applicable sub-limit is part of, and shall not increase, the *limit of liability*.

Loss

loss means the total amount which the *insured* is required to pay by reason of:

- (a) final adjudication or settlement of a *claim*; and
- (b) *defence costs* incurred in connection with that *claim*;

but does not include:

- (i) fines or penalties, whether civil or criminal in nature;
- (ii) aggravated, punitive, exemplary or multiple damages;
- (iii) liquidated damages prescribed under contract;
- (iv) wages, salary, commission, fees, charges and other form of remuneration or profit lost or foregone by the *insured*, as a result of a *claim*;
- (v) any component of an award or settlement which represents the cost of performance of the *insured's* original contractual obligations, non-fulfilment or negligent performance of which has given rise to the *claim*.

Solely for the purpose of the *limit of liability*, sub-limits and other applicable terms and conditions of the policy, loss also includes all loss covered by the policy but which is not dependent upon the making of a *claim* against the *insured*.

Period of insurance

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

Personal injury

personal injury means:

- (a) bodily injury, sickness, disease, death or disability;
- (b) physical or mental stress, trauma or nervous shock and any consequences thereof, including but not limited to post traumatic stress disorder, anxiety, neurosis or phobia of any description;
- (c) false arrest, false imprisonment, wrongful detention, malicious prosecution, embarrassment and/or humiliation.

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.

Property damage

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

Retroactive date

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

Schedule

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

Subsidiary company

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

- (a) controls or controlled the composition of the board of directors; and/or
- (b) controls or controlled more than half of the voting power; and/or
- (c) holds or held more than half of the issued share capital or other ownership of the entity, and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the insured pursuant to the Corporations Act or the applicable Australian Accounting Standard.

Automatic Features

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

1. Consultants, subcontractors and agents

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

2. Continuous cover

If the *insured* has neglected, through error or oversight only, to avail themselves of the benefit of Section 40, Subsection 3 of the Insurance Contracts Act 1984 (Cth), in relation to an earlier policy issued to them by Zurich of the same type as this one, or to report a *civil liability claim* actually made upon the *insured* during the period of such earlier policy, then provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy then, notwithstanding Exclusion 11. 'Prior and pending', we will permit the matter to be reported under this policy and will indemnify the *insured*, on the conditions that:

- (a) the indemnity will be subject to the applicable *limit of liability* of the earlier policy under which the matter should have been reported to Zurich;
- (b) we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which it has suffered as a result of the delayed notification;
- (c) the indemnity will be subject in addition to all of the terms, conditions, definitions and exclusions, other than the *limit of liability*, contained in this current policy; and
- (d) the *insured* hereby agrees that it will not seek indemnity from us in respect of the *claim* or circumstance under both policies issued by Zurich.

3. Dishonesty

Notwithstanding Exclusion 2. 'Dishonesty', we agree to indemnify the *insured* for *civil liability claims* resulting from any actual or alleged dishonest, fraudulent, criminal or malicious activity in the provision of the *professional services* by an employee or employees of the *insured* provided that:

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

4. Estates and legal representatives

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

accordance with the Insuring Clause in respect of *civil liability claims* solely based on the conduct of the relevant *insured*. It does not respond where the conduct is that of the *insured's* estate, heir, legal representative or assignee.

5. Intellectual property

Notwithstanding Exclusion 6. 'Intellectual property infringement', we agree to indemnify the *insured* in accordance with the Insuring Clause for any *civil liability claim* resulting from any unintentional infringement of copyright, trade marks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by the *insured*.

Payments under this sub-limit shall not exceed \$500,000 any one *claim* and in the aggregate for all *claims*, inclusive of *defence costs*.

6. Joint venture

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

7. Libel, slander and defamation

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

8. Loss of documents

Notwithstanding Exclusion 10. 'Personal injury / property damage', we agree to indemnify the *insured* in respect of:

- (a) any *civil liability claim* made against the *insured* for loss, damage or destruction of any documents and/or computer records belonging to the *insured* or for which the *insured* is legally responsible, where the loss, damage or destruction occurs in the provision of the *professional services* after the *retroactive date*; and
- (b) all reasonable costs and expenses incurred by the *insured* in replacing and/or restoring such documents.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within 28 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 the prior written consent of Zurich, such consent not to be unreasonably withheld;

- (ii) we shall not be liable for any *claim* in 8. (a) or costs and expenses in 8. (b) directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused;
- (iii) we shall not be liable for any *claim* in 8. (a) or costs and expenses in 8. (b) directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The *limit of liability* for this feature applies to all *claims* covered under 8. (a) above, inclusive of defence costs, and costs and expenses in 8. (b) above, in the aggregate.

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

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

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

10. Newly created / acquired subsidiary company

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

- (a) cover only applies to *civil liability claims* made against the new *subsidiary company* within a period of 30 days from the date of the creation or acquisition of the *subsidiary company*;
- (b) cover only applies to such *claims* arising from conduct which occurred or is alleged to have occurred subsequent to the date of acquisition or creation of the *subsidiary company*;

- (c) during the time in 10. (a) above, the *insured* shall supply such additional information relating to the new *subsidiary company* as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the policy.

11. Past subsidiary company

Coverage in accordance with Insuring Clause shall extend to those entities which were once *subsidiary companies* but have since ceased to be *subsidiary companies*. Coverage in this respect shall only apply to *civil liability claims* based on conduct which occurred or is alleged to have occurred between the date of acquisition or creation of the *subsidiary company* by the *insured* and the date such *subsidiary company* ceased to be a *subsidiary company*.

Optional Features

12. Personal injury / property damage

Notwithstanding Exclusion 10. 'Personal injury / property damage', if a sub-limit is shown in the *schedule* for such coverage, then subject to the terms and conditions of the policy except as otherwise stated herein, we agree to indemnify the *insured* in respect of any *claim* made against the *insured* for damages or other monetary payment of a compensatory nature in respect of *personal injury* and/or *property damage*, but only where such *claim* is based on negligence in the *insured's* provision of the *professional services*. The provisions of the Insuring Clause otherwise apply.

It is further agreed that:

- (a) the *limit of liability* for this feature is the sub-limit specified in the *schedule* for this coverage, any one *claim* and in the aggregate for all *claims* and inclusive of all *defence costs*. The sub-limit is part of and not in addition to the *limit of liability* specified in the *schedule*;
- (b) the *excess* for this feature is the *excess* specified in the *schedule* and is inclusive of *defence costs*.

13. Fidelity

If a sub-limit is shown in the *schedule* for such coverage, then subject to the terms and conditions of the policy except as otherwise stated herein, we agree to indemnify the *insured* against the direct loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the *insured* or for which the *insured* is legally liable, where such loss results directly from the dishonest or fraudulent act or omission of any principal, partner, director or employee of the *insured*.

The following terms apply to this coverage:

- (a) the loss must be first discovered by the *insured* in the *period of insurance*;
- (b) the loss must be notified to Zurich within 28 days of discovery and within the *period of insurance*;
- (c) there is no coverage for any further loss occurring after the date of first discovery by the *insured* of such conduct on the part of the principal, partner, director or employee or after the *insured* had reasonable grounds for suspicion of such conduct by such person, where the further loss is connected with any additional, new or further such conduct on the part of such person following that first discovery. This clause does not prevent coverage for loss resulting directly from the conduct of such a person prior to the *insured's* first discovery of such conduct;
- (d) loss under this coverage does not include indirect or consequential losses of any nature, including but not limited to liability to third parties, damages of any kind, interest, investigation costs, trading losses or any other head that is not the direct loss of the property referred to;
- (e) the *insured* shall, at its own cost, bear the burden of substantiating to the satisfaction of Zurich, any loss covered by this optional extension;
- (f) our liability under this coverage is net of any recovery made by the *insured* from applying moneys otherwise owing or payable by it to the principal, partner, director or employee;
- (g) the *limit of liability* for this feature is the sub-limit specified in the *schedule* and is the total limit of our liability under or in connection with this coverage for all losses. All loss in any way connected with dishonest or fraudulent conduct of the principal, partner, director or employee shall be deemed to be one loss for the purpose of the sub-limit. The sub-limit is part of and not in addition to the *limit of liability*;
- (h) each and every individual dishonest or fraudulent act or omission, shall have a separate *excess* applied to it. If no *excess* is shown in the *schedule* as applicable to this cover, then the *excess* shall be that otherwise specified in the *schedule*.

Exclusions

This policy does not provide any indemnity against *loss* or in connection with any *claim*:

- 1. Contractual liability, assumed liability and trading debts**
directly or indirectly arising from or in connection with:
 - (a) any contractual liability or assumed liability, unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability;
 - (b) any liability assumed by an *insured* under any guarantee or warranty unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability; or
 - (c) any trading debt incurred by the *insured*.
- 2. Dishonesty**
directly or indirectly arising from or in connection with:
 - (a) any actual dishonest, fraudulent, criminal or malicious conduct of any *insured*;
 - (b) any *civil liability* incurred by the *insured* which arises from conduct which is established to have been committed with a reckless disregard for the consequences thereof; or
 - (c) any wilful breach of any statute, contract or duty by any *insured*.
- 3. Directors and officers**
directly or indirectly arising from or in connection with any *insured* acting in the capacity of a director or officer of a company, association or other legal entity.
- 4. Employer's liability**
directly or indirectly arising from or in connection with an *insured's* liability as an employer, whether under Worker's Compensation legislation or otherwise, 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.

5. Insolvency

directly or indirectly arising from or in connection with the *insolvency* of the *insured*.

6. Intellectual property infringement

directly or indirectly arising from or in connection with plagiarism, infringement or violation of copyright, of trademark, service mark, registered design, license, patent or of any other form of intellectual property whether registered or unregistered.

7. Manufacturing / efficacy / faulty workmanship

directly or indirectly arising out of or in connection with:

- (a) 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
- (b) 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*.

8. Money and negotiable instruments

directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

9. Occupier's liability

directly or indirectly arising from or in connection with the occupation or ownership of any real property by the *insured*.

10. Personal injury / property damage

directly or indirectly arising from or in connection with *personal injury* or *property damage* suffered or incurred by any person or entity.

11. Prior and pending

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

- (a) any facts or circumstances of which the *insured* was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against the *insured* might possibly arise; or
- (b) the *insured's* provision of the *professional services* prior to the *retroactive date*.

12. Radioactivity / pollution / asbestos / war

directly or indirectly arising from or in connection with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof; or
- (b) seepage, pollution or contamination of whatever nature and however occurring; or
- (c) mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there; or
- (d) asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising; or
- (e) silicon or silica, or any material, substance or property derived from or containing or allegedly containing silicon or silica, in whatever form or quantity and however arising; or
- (f) 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, public or local authority.

13. Related entities

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

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

14. Retroactive date

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

15. Superannuation trustee

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

16. Terrorism

directly or indirectly arising from or in connection with any *act of terrorism* regardless of any other cause or event contributing concurrently or in any other sequence thereto, or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

17. USA / Canada exposure

- (a) directly or indirectly arising out of or in connection with conduct of the *insured* anywhere within the territorial limits of the United States of America or the Dominion of Canada, their territories or protectorates;
- (b) legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada, their territories and protectorates;

- (c) for 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, the Dominion of Canada or their territories and protectorates;
- (d) which is pursued by way of Arbitration, Mediation, Conciliation, Expert Determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of the United States of America, the Dominion of Canada, their Territories and Protectorates, or for the recovery of any Award or costs issued or incurred in connection with any such procedure.

Claims Conditions

1. Advance payment of defence costs

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

- (a) indemnity under this policy is confirmed in writing by us; or
- (b) at our absolute discretion, without admitting indemnity, we agree to advance such *defence costs*.

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

2. Allocation

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

If we and the *insured* agree on an allocation of *defence costs*, we shall, subject to Claims Condition 1. 'Advance payment of defence costs', advance *defence costs* in accordance with that agreement. If the parties cannot agree on allocation, we shall, subject to Claims Condition 1. 'Advance payment of defence costs', advance *defence costs* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

Zurich, if requested by the *insured*, shall submit any dispute on allocation to a Senior Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the Senior Counsel shall determine the allocation of *loss* according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in this Cause 2. The costs of Senior Counsel shall constitute *defence costs* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

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

Any allocation or advancement of *defence costs* in connection with a *claim* shall not pre-determine the allocation of other *loss* on account of such *claim*. In any arbitration, suit or other proceedings between Zurich and the *insureds* no presumption shall exist concerning what is a fair and proper allocation between covered *loss* and uncovered *loss*, but will be governed by the intention set out in this clause.

3. Defence and settlement

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

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

Zurich shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, which shall not unreasonably be withheld. We shall retain the right to actively

participate in the defence and settlement of any *claim* in respect of which indemnity is sought under this policy.

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

4. Handling and co-operation

The *insured* shall, at their own cost, upon our request give all such information and assistance to us as we may reasonably require, to enable us to investigate and to defend a *claim* and to make any cross-claim for contribution, indemnity or damages and/or to enable us to determine our liability under this policy. In particular, the *insured* shall inform Zurich of any other insurance, indemnity or other source of compensation, statutory, contractual or otherwise, pursuant to which the *insured* may be entitled to any benefit in respect of the *claim*.

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

5. Payments in respect to 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 supply, 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 and Services Tax) Act 1999, 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 supply, 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 and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

6. Reinstatement

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

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

7. Reporting and notice

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

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

Zurich Australian Insurance Limited
Attention: Specialties, Claims Manager
General Insurance

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

8. Subrogation

If any payment is made under this policy in respect of a *claim* or loss, Zurich shall be subrogated to all rights of recovery available to the *insured* to the extent of such payment, and shall be entitled to first call upon any money received pursuant to such rights and to prosecute such rights in the name of the *insured*, who shall in addition render at their own cost all reasonable assistance and co-operation with us.

General Conditions

1. Alteration to risk

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

- (a) activities that are materially different from those declared in the proposal;
- (b) activities outside the normal activities of the *professional services*;
- (c) *insolvency* in relation to any *insured*;
- (d) any loss of or conditions imposed upon any licence or other authority required by the *insured* to practice the *professional services*.

2. Assignment

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

3. Authorisation

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

4. Cancellation / termination

- (a) The *insured* may cancel this policy by giving notice in writing to us at any time.
- (b) We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect 30 days from the time of receipt of notification by the *insured*.
- (c) After cancellation by the *insured* a refund of premium will be allowed pro rata of 70 per cent of the premium for the unexpired *period of insurance*.

- (d) After cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

5. Complaints and Disputes Resolution process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on 132 687. We will respond to your complaint within 15 working days provided we have all necessary information and have completed any investigation required. If more information or investigation is required we will agree reasonable alternative timeframes with you.

If you are unhappy with our response or we cannot agree on reasonable alternative timeframes, your complaint will be registered as a dispute and it will be reviewed by our Internal Disputes Resolution process which is free of charge.

We will respond to your dispute within 15 working days provided we have all necessary information and have completed any investigation required. If more information or investigation is required we will agree reasonable alternative timeframes with you. We will keep you informed of the progress of our review at least every 10 working days and give you our response in writing.

If you are unhappy with our response or we cannot agree on reasonable alternative timeframes, you can refer the matter to the External Disputes Resolution Scheme of which we are a member. This scheme is administered by Insurance Ombudsman Services Limited (IOS). IOS will review our decision in accordance with their terms of reference. You are not bound by their decision. However, we are bound to act immediately on IOS's decision. This is a free service provided by an independent body. Brochures outlining the operations of IOS are available from us or the Insurance Council of Australia in your State or Territory. You can phone the IOS from anywhere in Australia on 1300 780 808 or write to them at:

Insurance Ombudsman Services Limited
PO Box 561,
Collins Street West,
Melbourne, Vic, 8007.
Email: ios@insuranceombudsman.com.au

6. Limit of liability and excess

Our total liability toward any and all *insured* in respect of all *loss*, including *defence costs*, directly or indirectly arising out of or in connection with:

- (a) any single *claim*;
- (b) all *claims* referable to the *period of insurance*;
- (c) all losses otherwise covered under the policy;

shall not exceed the respective *limit of liability* or other applicable sub-limit prescribed in the policy and/or *schedule* and shall apply only to the amount by which such *loss* exceeds the prescribed amount of the applicable *excess*. For the purposes of application of the *limit of liability* and the *excess*, all *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be deemed to be a single *claim*.

Where we make a payment in relation to a *claim* which includes payment of part or all of the *excess* the *insured* shall, within 28 days of being notified from us, reimburse Zurich for the amount of the *excess* paid by us.

7. Policy interpretation

It is agreed that the proper law of this policy is the law of the Commonwealth of Australia and of the Australian State or Territory in which the policy is issued by us. Zurich and the *insured* agree to the exclusive jurisdiction of the appropriate Australian Court, in relation to all matters arising under or in connection with it.

8. Privacy

Zurich respects your privacy. Before we collect personal information you should know the following things:

We require personal information about you to assess your request for insurance and to administer the policy.

- (a) Where relevant for this purpose, we will disclose your personal information (other than sensitive information such as health information) to your intermediary.
- (b) We will also, where relevant, disclose your personal information, including sensitive information, to our service providers (including loss adjusters, administrators, reinsurers) and to our business partners for this purpose. By submitting your personal details, you consent to those organisations collecting and us disclosing personal and sensitive information about you for this purpose.

- (c) A list of the type of service providers and business partners we commonly use is available on request, or on our website. Go to www.zurich.com.au and click on the Privacy link on our home page.
- (d) If you do not provide the requested information, your proposal may not be accepted, we may not be able to administer your policy or you may breach your duty of disclosure, the consequences of which are set out in the Duty of Disclosure notice.
- (e) We may also disclose personal information about you where we are required or permitted to do so by law.
- (f) In most cases, on request, we will give you access to the personal information we hold about you. In some circumstances, we may charge a fee for giving you access, which will vary but will be based on our costs.

If you would like to find out more, you may contact us by telephone on 132 687 or email at Privacy.Officer@zurich.com.au or in writing to:

The Privacy Officer
 Zurich Australian Insurance Limited
 PO Box 677, North Sydney, 2059

9. Severability and non-imputation

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

- (a) any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- (b) for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

10. Singular and plural

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

11. Valuation and foreign currency

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

12. Worldwide territorial / jurisdictional limits

Subject to the terms and conditions of the policy (including but not limited to Exclusion 17. 'USA / Canada exposure') and anything specified to the contrary in the *schedule*, this policy shall apply to:

- (a) conduct committed, attempted or alleged to have been committed or attempted, anywhere in the world;
- (b) claims made and actions brought anywhere in the world.

If the *schedule* specifies a Territorial or Jurisdictional Limit, then coverage under this policy is restricted to the specified Limits. However, that specified Limit does not restrict the operation of Exclusion 17. 'USA / Canada exposure'.



Zurich is proud to support football in Australia as an Official Partner of the Hyundai A-League

Zurich Australian Insurance Limited
ABN 1300 296 640
AFS Licence No: 232507
Head Office: 5 Blue Street
North Sydney NSW 2060

Client Enquiries
Telephone: 132 687
www.zurich.com.au

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