

Zurich Steadfast Professional Indemnity

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 policy is a 'claims made' liability insurance policy. It only provides cover if:

A Claim is made against an Insured, by some other person, during the period when the policy is in force; and

The Claim arises out of circumstances 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 an insured becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the insured notifies Zurich of the matter before this policy expires, Zurich 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 an 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) and Zurich may refuse to pay any subsequent Claim, notwithstanding that the events giving rise to it or the circumstances 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.

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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 insurance provider with a global network of subsidiaries and offices. With about 60,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

About Steadfast

Steadfast Group Limited (Steadfast) is a public company. It includes a large network of insurance brokerages who operate in Australia as Steadfast Brokers. This policy is available exclusively to you through a Steadfast broker.

Steadfast does not issue, guarantee or underwrite this policy.

Important information about Steadfast's advice

Any advice Steadfast gives about this policy does not take into account any of your particular objectives, financial situation or needs. For this reason, before you act on Steadfast's advice, you should consider the appropriateness of the advice taking into account your own objectives, financial situation and needs.

Before you make any decisions about whether to acquire this policy we recommend you should read this insurance policy.

How to apply for this insurance

Throughout this document when we are referring to your Steadfast broker, we simply refer to them as your intermediary.

If you are interested in buying this product or have any inquiries about it, you should contact 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 factual information or general advice about the product. We do not give advice on whether the product is appropriate for your personal objectives, needs or financial situation.

Duty of Disclosure

Before entering into a contract of general insurance with us, you have a duty under the Insurance Contracts Act 1984 to disclose to us every matter that you are aware of, or could reasonably be expected to be aware of, that is relevant to our decision about insuring 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 these 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 undertaken by us;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know;
- as to which compliance with your duty is waived by us.

Non-disclosure

If you fail to comply with your Duty of Disclosure, we may be entitled to reduce our liability under the policy in respect of a Claim or may cancel the Policy. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Our contract with you

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

Your Policy is made up of:

- the Policy wording. It tells you what is covered and sets out the Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and claims procedure 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 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. If you want more information about any part of your Policy, please ask us, or your Steadfast broker.

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.

Goods and Services Tax

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and Taxable Percentage.

Privacy

Zurich is bound by the Privacy Act 1988 (Cth). Before providing us with any Personal or Sensitive Information ('Information'), you should know that:

We collect, use, process and store Personal Information and, in some cases, Sensitive Information about you in order to comply with our legal obligations, assess your application and, if your application is successful, to administer the products or services provided to you, to enhance customer service and/or product options or manage a claim ('purposes').

If you do not agree to provide us with the Information, we may not be able to process your application, administer your policy or assess your claims.

By providing us or your intermediary with your Information, you consent to our use of this Information which includes us disclosing your Information where relevant for the purposes, to your intermediary, affiliates of the Zurich Insurance Group Ltd, other insurers and reinsurers, our service providers, our business partners or as required by law within Australia or overseas.

Zurich may obtain Information from government offices and third parties to assess a claim in the event of loss or damage.

For further information about Zurich's Privacy Policy, a list of service providers and business partners that we may disclose your Information to, a list of countries in which recipients of your Information are likely to be located, details of how you can access or correct the Information we hold about you or to make a complaint, please refer to the Privacy link on our homepage – www.zurich.com.au, contact us by telephone on 132 687 or email us at Privacy.Officer@zurich.com.au

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 we have issued or service you have received from us, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687.

We will respond to your complaint within fifteen (15) working days. If you are not satisfied with our response, you may have the matter reviewed through our internal dispute resolution process, which is free of charge.

Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

Our Agreement

In consideration of payment of the Premium, we will provide indemnity in accordance with, and subject to, the terms of this Policy. We will provide you with the cover you have chosen as set out in the Policy, occurring during the Period of Insurance shown on your Policy Schedule.

The amount of any Deductible that applies to your Policy will be shown on your Policy Schedule.

Section 1 – Insuring Clauses

Insuring Clause A

1.1 Civil Liability Insuring Clause

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim first made against the Insured during the Period of Insurance and notified to us during the Period of Insurance in respect of civil liability incurred or alleged to have been incurred in the conduct of the professional activities and duties of the Insured's Business.

Insuring Clause B

1.2 Costs and Expenses Insuring Clause

We agree to pay Costs and Expenses in respect of any Claim indemnified by this Policy.

If we elect not to take over and conduct, in the name of the Insured, the defence or settlement of a Claim, we agree to pay Costs and Expenses within a reasonable time frame following our receipt of invoices specifying such Costs and Expenses and prior to determining the Insured's entitlement to indemnity for the Claim.

In determining the Insured's entitlement to indemnity under this Policy in respect of a Claim, we agree that we will not rely on Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts) unless and until:

- (a) the Insured makes an admission in writing of any conduct described in Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts); or
- (b) it has been established through a judicial process that the Insured has committed any conduct described in Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts).

The payment of any Costs and Expenses is subject to the following conditions:

- (i) the payment of any Costs and Expenses by us to the Insured does not constitute our acceptance of the Insured's right to indemnity for any Claim.
- (ii) if either (a) or (b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, we may cease to pay Costs and Expenses to the Insured, unless we, at our sole discretion, decide to continue to pay Costs and Expenses resulting from such Claim.
- (iii) where either (a) or (b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, the Insured will refund Costs and Expenses paid by us, unless we agree in writing to waive recovery of such Costs and Expenses.

Insuring Clause Clarification

For the avoidance of doubt, the indemnity provided by Insuring Clauses A and B (Clauses 1.1 and 1.2) includes, but is not limited to any civil liability incurred or alleged to have been incurred by the Insured in the conduct of the professional activities and duties of the Insured's Business:

- 1.3** for breach of a contract for the provision of professional services.
- 1.4** for breach of fiduciary duty.
- 1.5** for breach of warranty of authority committed, by or on behalf of the Insured, in good faith and in the belief that appropriate authority was held.
- 1.6** for any unintentional infringement of copyright, moral right (under the Copyright Act 1968 (Cth)), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality.
- 1.7** for defamation.
- 1.8** under the terms of the Competition and Consumer Act 2010 (Cth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

Section 2 – Retroactive Date

- 2.1** 'Unlimited Retroactive Cover' – if no Retroactive Date is specified in the Schedule or if the Retroactive Date is specified in the Schedule as 'Unlimited', this Policy shall provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- 2.2** 'Limited Retroactive Cover' – where a Retroactive Date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed on or after the Retroactive Date.

Section 3 – Automatic Policy Extensions

Preamble

We shall provide indemnity as is available under this Section, for no additional premium, provided always that:

- (a) the indemnity provided by each Policy Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- (b) the inclusion of any Policy Extension shall not increase the Limit of Indemnity.

3.1 Additional benefit – Claims preparation costs

We will pay up to \$25,000 in the aggregate during the Period of Insurance for reasonable professional fees and such other expenses incurred by the Insured for the preparation of any Claim that is covered under this Policy.

The cover provided under this Policy Extension operates in addition to the Limit of Indemnity or Aggregate Limit of Indemnity (whichever may be applicable).

Provided always that such cover shall not include any Costs and Expenses (as defined in Clause 8.4 – Costs and Expenses).

3.2 Consultants, Sub-contractors and Agents

The conduct of the professional activities and duties of the Insured's Business shall be deemed to include, acts, errors or omissions of consultants, sub-contractors or agents of the Named Insured, while undertaking work in connection with the conduct of the professional activities and duties of the Insured's Business and for which the Insured is liable.

We will indemnify any such consultants, sub-contractors or agents themselves, provided always that the relevant act, error or omission giving rise to the Claim occurred:

- (a) in the course of the conduct, by the consultants, sub-contractor or agent, of the professional activities and duties of the Insured's Business for and on behalf of the Named Insured; and
- (b) at the time when the consultant, sub-contractor or agent was under the Named Insured's direct control and supervision.

3.3 Continuous cover

We agree to indemnify the Insured for any Claim, otherwise covered by this Policy, arising from any Known Circumstance (notwithstanding Exclusion 5.8 – Known Claims and Known Circumstances) if:

- (a) we were the professional liability insurer of the Insured when the Insured first knew of such Known Circumstance; and
- (b) we continued without interruption to be the Insured's professional liability insurer up until this Policy came into effect; and
- (c) had we been notified by the Insured of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy.

The Insured agrees that it will not seek indemnity from us in respect of the Claim or any Claim arising out of the Known Circumstances under any other Policy issued by Zurich.

We may reduce the amount we pay out under this provision by the amount of any prejudice we may suffer in consequence of any delayed notification to us.

Our limit of liability provided under this Extension is the lesser of our limit of liability under the terms of the policy in force at the earlier time referred to in paragraph (c) above, or the Limit of Indemnity under this Policy. The terms of this Policy otherwise apply.

3.4 Court attendance costs

For any person described in (a) or (b) below who actually attends court as a witness in connection with a Claim notified under and covered by this Policy, we agree that Costs and Expenses will include the following rates per day on which attendance in court has been required:

- (a) for any person who was or is a principal, partner or director of the Named Insured: \$500.
- (b) for any person who was or is an Employee of the Named Insured: \$250.

No Deductible shall apply to this Policy Extension.

3.5 Estates and Legal representatives

We agree to include in the definition of the Insured (Clause 8.8) the estate, heirs, legal representatives or assigns of any Insured in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such Insured in respect of any civil liability of the Insured that would have been covered by Insuring Clause A and/or B if the Insured was alive, had capacity or was not insolvent. Provided always that such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

3.6 Extended notification period

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

- (a) we will treat that Claim as if it had been made against the Insured and notified to us during the immediately preceding Period of Insurance; and
- (b) coverage afforded thereunder does not reinstate or increase the Limit of Indemnity or the Aggregate Limit of Indemnity or extend the Period of Insurance; and
- (c) coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the Insured before the end of the Period of Insurance or the cancellation date of this Policy where this Policy has been cancelled and not before the Retroactive Date.

3.7 Fraud, Dishonesty or Intentional acts

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 5.6 (Fraud, Dishonesty or Intentional acts). Provided always that:

- (a) such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts);
- (b) such indemnity shall not apply to any Claim against any Insured directly or indirectly based upon, attributable to, or in consequence of:
 - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
 - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
 - (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such a right.

3.8 Joint venture

If the name of a Joint Venture is included in the Schedule under 'Joint Ventures', then, we will indemnify the Insured for the Insured's joint and individual civil liability, arising out of the conduct of the professional activities and duties of such Joint Venture.

If the name of the Joint Venture is not included in the Schedule under 'Joint Ventures', then, we will indemnify the Insured only for the Insured's individual civil liability and not for the Insured's joint civil liability arising out of the conduct of the professional activities and duties of such Joint Venture. Provided always that the business of such Joint Venture is the same as the Insured's Business (as defined in Clause 8.9 Insured's Business).

3.9 Loss of documents

We agree to indemnify the Insured in respect of certain loss described in this clause arising from the loss of any Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found. Provided always that:

- (a) such loss of Documents was first discovered by the Insured during the Period of Insurance and was notified in writing to us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by us and agreed to by the Insured; and
- (c) such indemnity shall be limited to the loss of any Documents:
 - (i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; or
 - (ii) which occurred whilst such Documents were in transit.

3.10 Newly created or Acquired subsidiary

We agree to include in the definition of Insured (Clause 8.8) any Subsidiary created or acquired by the Named Insured during the Period of Insurance for a period of up to thirty (30) days (but never beyond the expiry date of the Period of Insurance) from the date of such creation or acquisition.

Provided always that:

- (a) this Policy Extension will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation or acquisition of the Subsidiary; and
- (b) the business of such Subsidiary is the same as or substantially similar to the the Insured's Business (as defined in Clause 8.9 Insured's Business).

The Insured may apply to us within such thirty (30) day period, to vary this Policy to continue the cover provided by this Policy Extension until the expiry date of the Period of Insurance. The Insured shall supply us with such additional information relating to the new Subsidiary and pay any reasonable additional premium as may be required by us.

3.11 Official investigations and Enquiries – costs and expenses

We agree to pay Investigation Costs and Expenses.

Provided always that:

- (a) we shall be entitled, at our discretion, to appoint legal representation to represent the Insured in the investigation, examination or enquiry;
- (b) the notice of intended investigation, examination or enquiry is served upon the Insured during the Period of Insurance and is notified to us during the same Period of Insurance;
- (c) in the event that a claim for payment of Investigation Costs and Expenses is withdrawn or indemnity under this Policy Extension is subsequently withdrawn or denied, we shall cease to advance Investigation Costs and Expenses and the Insured shall refund any Investigation Costs and Expenses advanced by us to the extent the Insured was not entitled to such Investigation Costs and Expenses, unless we agree in writing to waive recovery of such Investigation Costs and Expenses; and
- (d) our total liability in respect of Investigation Costs and Expenses for all claims made under this Policy Extension shall not exceed \$250,000.

For the purpose of this Policy Extension, an official investigation, examination or enquiry includes but is not limited to:

- (i) any investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry, or conducted by a regulatory authority such as the Australian Securities and Investments Commission.
- (ii) any investigation, examination or enquiry conducted by any disciplinary committee of any association, industry or professional body of which the Insured is a member.

3.12 Public relations expenses

Where the Insured retains the services of a public relations consultant for the sole purpose of protecting the Insured's reputation that has been brought into question as a direct result of a Claim covered by this Policy, we agree to pay any reasonable fee, costs and expenses of such public relations consultant. Provided always that:

- (a) the Insured notifies us within thirty (30) days of first becoming aware of the Insured's reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and
- (b) we have given prior written consent (which shall not unreasonably be withheld) to retain the services of such public relations consultants; and
- (c) our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$50,000.

3.13 Run off cover until expiry of the Period of Insurance

We agree that in the event that an Insured entity ceased or ceases to exist or operate or be a Subsidiary or became or becomes consolidated with, merged into or acquired by any other entity either before or during the Period of Insurance then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Period of Insurance.

Provided always that such coverage shall only apply in respect of Claim(s) arising from any act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

3.14 Severability

We agree that where any Insured:

- (a) failed to comply with the duty of disclosure contained in the Insurance Contracts Act 1984 (Cth); or
- (b) made a misrepresentation to us before this contract of insurance was entered into; or
- (c) fails to comply with any conditions of this Policy,

the right of any other Insured to indemnity under this Policy shall not be prejudiced thereby. Provided always that this Policy Extension shall only apply when:

- (i) such other Insured shall be entirely innocent of and has no prior knowledge of any such conduct; and
- (ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise us in writing of all known facts in relation to such conduct.

Notwithstanding the above, any fact or knowledge possessed by any past or present partner, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to the Named Insured.

Section 4 – Optional Extensions

Preamble

It is agreed that:

- (a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- (b) the inclusion of any Optional Extension shall not increase the Limit of Indemnity;
- (c) the inclusion of any Optional Extension shall be at our absolute discretion; and
- (d) where an Optional Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Optional Extension.

4.1 Fidelity

Notwithstanding Exclusion 5.6 (Fraud, Dishonesty or Intentional acts), we agree to provide indemnity to the Insured against 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 any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured. Provided always that:

- (a) such loss is first discovered by the Insured during the Period of Insurance and is notified in writing to us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance);
- (b) we shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;
- (c) we shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- (d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and we will be under no obligation to provide indemnity to the Insured until such time as we are satisfied that such loss has, in fact, been sustained;
- (e) all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single Deductible shall apply to such loss; and
- (f) our liability for each loss under this Optional Extension and our aggregate liability for all losses under this Optional Extension shall not exceed \$250,000.

4.2 Previous business

We agree to provide indemnity in respect of any Claim made against any person who is or becomes or ceases to be during the Period of Insurance a principal, partner or director of the Named Insured in respect of any kind of civil liability incurred or alleged to have been incurred on the part of such person in the conduct of any professional activities and duties, which were the same as or substantially similar to the professional activities and duties of the Insured's Business, before that person joined the Named Insured.

4.3 Multi-year run-off after merger, takeover, sale, winding up of named insured

If the Named Insured is subject to a merger, takeover, sale or winding up, then, we agree to extend the Period of Insurance up to seven (7) years immediately following the expiry of the Period of Insurance.

Provided always that:

- (a) this Policy Extension will only apply with respect to any Claim(s) arising from any act, error or omission occurring prior to the effective date of such merger, takeover, sale or winding up; and
- (b) on such terms and conditions, and for such additional premium as we may reasonably require.

Section 5 – Exclusions

We shall not be liable under this Policy to provide indemnity in respect of any:

5.1 Aircraft, Motor vehicles and Watercraft

Claim based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft, motor vehicle or watercraft by an Insured.

5.2 Asbestos

Claim based upon, attributable to, in consequence of or in connection with asbestos or any material or property containing or alleged to contain asbestos, in what ever form or quantity and however arising.

5.3 Contractual liability

Claim based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of any contractual undertaking, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contractual undertaking, warranty, guarantee or indemnity.

5.4 Directors and Officers liability or Trustees liability

Claim based upon, attributable to, or in consequence of any activities as a trustee, director, secretary or officer unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

5.5 Fines and Penalties

Claim for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, provided always that this exclusion shall not apply to compensatory civil penalties. Our total liability for the payment of compensatory civil penalties during any one Period of Insurance shall not exceed \$250,000 in the aggregate, which amount shall form part of and not increase the Limit of Indemnity.

Provided further that we will not be liable to indemnify the Insured for any compensatory civil penalty:

- (a) for which we are legally prohibited from indemnifying the Insured under Australian law.
- (b) based upon, attributable to or in consequence of any:
 - (i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation.
 - (ii) recklessness.
 - (iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

5.6 Fraud, Dishonesty or Intentional acts

Claim based upon, attributable to, or in consequence of:

- (a) any dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- (b) any act or omission of an Insured or their consultants, sub-contractors, or agents with the intention of causing a third party loss, damage or injury or committed with a reckless disregard for the consequences thereof; or
- (c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

Provided always that this exclusion shall not apply unless and until:

- (i) the Insured makes an admission in writing of any conduct described in clauses (a), (b) and/or (c) above; or
- (ii) it has been established through a judicial process that the Insured has committed any conduct described in clauses (a), (b) and/or (c) above.

5.7 Jurisdictional limits

Claim:

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

5.8 Known claims and Known circumstances

- (a) known Claims (or losses or claims) as at the inception date of this Policy; or
- (b) Claims (or losses or claims) arising from any Known Circumstance(s); or
- (c) Claims (or losses or claims) disclosed in the Proposal form.

5.9 Obligations to workers

Claim based upon, attributable to, or in consequence of:

- (a) Bodily Injury of any Worker of an Insured or damage to or destruction of any property of any Worker of an Insured, including loss of use of property, arising out of, or in the course of, their employment;
- (b) actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any Insured against any Worker or employment applicant.

For the purpose of Exclusions 5.9 (a) and 5.9 (b) only, the term 'Worker' means any person employed by or who is deemed to be employed by the Insured pursuant to any Workers' Compensation Law.

5.10 Occupier's liability

Claim based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an Insured.

5.11 Pollutants

Claim directly or indirectly based upon, attributable to, or in consequence of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water.

5.12 Product liability

Claim based upon, attributable to, or in consequence of the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the Insured, except where such Claim arises solely and directly from any advice, design or specification prepared by the Insured in the conduct of the professional activities and duties of the Insured's Business.

5.13 Radioactivity and Nuclear hazard

Claim arising directly or indirectly from:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof.

5.14 Related or Associated entities

Claim brought or maintained by or on behalf of an Insured or any Subsidiary or parent of an Insured.

5.15 Restrictive Trade Practices

Claim directly or indirectly based upon, attributable to, or in consequence of any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

5.16 Territorial limits

Claim based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

5.17 Terrorism

Claim directly or indirectly based upon, attributable to, or in consequence of:

- (a) any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- (b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of Terrorism.

5.18 Trading debts

Claim directly or indirectly based upon, attributable to, or in consequence of:

- (a) any trading debt incurred by an Insured or any guarantee given by an Insured for a debt; or
- (b) the refund of the Insured's professional fees or charges (by way of damages or otherwise).

5.19 War and Uprisings

Claim arising directly or indirectly from:

- (a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- (b) property being taken, damaged or destroyed by a government or public or local authority.

Section 6 – Claims Conditions

6.1 Claims mitigation and Co-operation

- (a) If the Insured, either prior to or during the Period of Insurance becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder. Costs and expenses incurred by the Insured in compliance with this clause 6.1 (a) shall be at the Insured's cost, unless otherwise agreed in writing by us.
- (b) The Insured shall frankly and honestly disclose to us all relevant information and, in addition shall provide assistance to us, as we may require to enable us to investigate and to defend any Claim under this Policy and/or to enable us to determine our liability under this Policy. Costs and expenses incurred by the Insured in compliance with this clause 6.1 (b) shall be paid by us in accordance with Policy Extension 3.1 (Additional benefit – Claims preparation costs).
- (c) Costs and expenses incurred by us to enable us to determine our liability under this Policy shall be at our own cost.

6.2 Defence and Settlement

- (a) The Insured shall not to settle any Claim, incur any Costs and Expenses or Investigation Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without our written consent, such consent not to be unreasonably withheld. We shall not be liable for any settlement, Costs and Expenses, Investigation Costs and Expenses, admission, offer or payment, or assumed obligation to which we have not consented in writing.
- (b) We shall be entitled if we so desire, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim at any time. In the event that this occurs, we will then have sole control of the Claim.

- (c) If we retains lawyers to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim, those lawyers will only act on our behalf in relation to any issue regarding the Insured's entitlement to indemnity from us and they will not act on the Insured's behalf in respect of any such issue. Any information that is received by lawyers retained by us in the course of investigating, defending or settling any Claim against the Insured can be provided to us and relied upon by us in relation to any issue that may arise regarding our liability to indemnify the Insured. In relation to any such information, the Insured waives any claim that it may have for legal professional privilege as between the Insured, Zurich and the lawyers retained by us.
- (d) The lawyers retained by us to conduct the investigation, defence or settlement of any Claim, may provide advice to us on any issue regarding our liability to indemnify the Insured and whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both us and the Insured.
- (e) The Insured agrees that all communications between us and lawyers retained by us to act in the conduct of the investigation, defence or settlement of any Claim which relate to the Insured's entitlement to indemnity from us are privileged as between Zurich and the lawyers and the Insured agrees that they are not entitled, under any circumstances, to access or obtain any such communications.
- (f) If any actual or apparent conflict arises between our interests and the Insured's interests, the lawyers retained by us to conduct the investigation, defence or settlement of any Claim may cease acting on behalf of the Insured and may continue to act on our behalf in relation to any dispute between Zurich and the Insured with respect to the Insured's entitlement to indemnity from us.

6.3 Foreign currency

All amounts referred to in this Policy are in Australian Dollars.

If the Insured incurs liability to settle any Claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which we pay to the Insured (or some other person at the Insured's direction) the indemnity in respect of such award or settlement; subject always to the Limit of Indemnity.

6.4 Insured's right to contest

In the event that we recommend a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. Provided always that our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with our written consent up to the date of such election, less the Deductible.

6.5 Reporting and Notice

- (a) The Insured shall give to us written notice as soon as practicable of any Claim made against an Insured. Provided always that such written notice is given to us during the Period of Insurance in which the Claim is made.
- (b) Notice of any Claim shall be given in writing to us, and delivered to the appropriate Zurich branch office, addressed as follows:

Zurich Australian Insurance Limited
Attention: Financial Lines, Claims Manager
General Insurance

6.6 Senior counsel clause

- (a) We shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and us) shall advise that such Claim should be contested.
- (b) In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs and Expenses and the prospects of the Insured successfully defending the Claim.
- (c) The cost of such Senior Counsel's opinion shall be paid by us in addition to the Limit of Indemnity.

6.7 Subrogation and Allocation of the proceeds of recoveries

In respect of any Claim covered by this Policy, and without limiting our rights at law, we shall be subrogated to all the Insured's rights of recovery, and the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable us effectively to bring suit in the name of the Insured.

The Insured shall not, without first obtaining the written consent from us, do anything or fail to do anything which excludes, limits or prejudices our rights of subrogation. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.

Should the Insured incur any legal liability which is not covered by this insurance:

- (a) due to the application of any Deductible; and/or
- (b) where the amount(s) of any judgment(s) or settlement(s) exceed(s) the Limit of Indemnity or any applicable sub-limit,

the Insured will be entitled to the first call on the proceeds of all recoveries made, by either the Insured or us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by us) and any remaining amount(s) will be applied to the reimbursement to us.

Section 7 – General Conditions

7.1 Alteration to risk

The Insured shall give to us written notice as soon as practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

- (a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk we shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984. Provide always that in the event that the Insured should become bankrupt or insolvent, we shall not be relieved thereby of the payment of any Claim hereunder because of such bankruptcy or insolvency.

7.2 Assignment of interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by our authorised employee.

7.3 Cancellation

- (a) The Insured may cancel this Policy at any time by notifying us in writing.
- (b) We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984. Such cancellation shall take effect thirty (30) days from the time of receipt of notification by the Insured or the Insured's insurance broker.
- (c) In the event of cancellation by the Insured or by us, we will allow a pro-rata refund of Premium for the unexpired Period of Insurance.

7.4 Deductible

- (a) In respect of each Claim made against the Insured (or each loss or claim incurred by the Insured in respect of Policy Extensions 3.1 Claims Preparation Costs, 3.9 Loss of Documents and 3.11 Official Investigations and Enquiries – costs and expenses) the amount of the Deductible shall be borne by the Insured at their own risk and we shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- (b) In the event of a Claim by the Insured under this Policy, the Insured shall, if directed by us, pay to us (or as is directed by us) the Deductible within fourteen (14) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle us to deduct such amount from any amount(s) required to settle any Claim or judgment, order, or any other payment to be made by us under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Costs and Expenses, our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with our written consent up to the date of such failure or refusal, less the Deductible.
- (c) Where we have elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within fourteen (14) working days from the date of such payment, reimburse us for such payment.
- (d) In respect of any Claim (or any loss or Claim) where the amount of the Claim (or any loss or claim) is less than the amount of the Deductible, the Insured shall bear all Costs and Expenses associated therewith unless we have agreed to meet such Costs and Expenses pursuant to Insuring Clause B.
- (e) Where the Deductible is expressed in the Schedule to be inclusive of Costs and Expenses then the Insured will pay all Costs and Expenses, up to the amount of the Deductible, incurred by us pursuant to the engagement of advisers considered necessary by us to determine the liability of the Insured and to resolve the Claim (or loss or claim).
- (f) Any Costs and Expenses incurred by us to determine whether we have a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by us.

7.5 Limit of indemnity

- (a) Our total liability under this Policy shall not exceed:
 - (i) in respect of any one Claim covered by this Policy, the Limit of Indemnity specified in the Schedule.
 - (ii) in respect of all Claims covered by this Policy, the Aggregate Limit of Indemnity, provided always that if there is any extra insurance in excess of the Limit of Indemnity, then cover in excess of the Limit of Indemnity is only available for so much of the liability (otherwise covered by this Policy) which is not covered by the extra insurance.
- (b) Unless otherwise specified in the Schedule or by endorsement to this Policy, the Limit of Indemnity specified in the Schedule is exclusive of Costs and Expenses and we agree to pay Costs and Expenses in addition to the Limit of Indemnity. Provided always that if a payment is made to dispose of a Claim which is in excess of the Limit of Indemnity available under this Policy, our liability for such Costs and Expenses shall be such proportion thereof as the Limit of Indemnity available under this Policy bears to the amount paid to dispose of the Claim.

7.6 Multiple claims

- (a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- (b) Where a single act, error, or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under this Policy.

7.7 Policy construction and Interpretation

- (a) The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.
- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a Joint Venture (whether incorporated or unincorporated), a partnership and a trust.

Section 8 – Definitions

8.1 Aggregate Limit of Indemnity

Aggregate Limit of Indemnity shall mean twice the Limit of Indemnity specified in the Schedule.

8.2 Bodily Injury

Bodily Injury shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

8.3 Claim

Claim shall mean:

- (a) The receipt by the Insured of any written or oral demand for compensation made by a third party against the Insured.
- (b) Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured which seeks compensatory relief made by a third party against the Insured.
- (c) for the purpose of Policy Extension 3.9 (Loss of documents) only, any losses described in that clause arising from loss of any Documents.
- (d) for the purpose of Policy Extension 3.11 (Official Investigations and Enquiries – costs and expenses) only, any attendance by the Insured at an investigation, examination or enquiry.

8.4 Costs and Expenses

Costs and Expenses shall mean the reasonable legal costs and other expenses (including but not limited to legal counsels' fees and experts' fees) incurred by or on behalf of the Insured with our prior written consent (which shall not be unreasonably withheld) or by us in the investigation, defence or settlement of a Claim, or in bringing or defending appeals in connection with a Claim.

8.5 Deductible

Deductible shall mean the amount shown as the Deductible in the Schedule.

8.6 Documents

Documents shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

8.7 Employee

Employee shall mean any person employed under a contract of service or apprenticeship.

8.8 Insured

Insured shall mean:

- (a) the Named Insured;
- (b) any predecessor in business of the Named Insured;
- (c) any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;
- (d) any person who is, during the Period of Insurance, an Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured;
- (e) any former principal, partner, director or Employee of the Named Insured, but only in respect of work performed while such person was a principal, partner, director or Employee of the Named Insured; and/or
- (f) any consultant, sub-contractor or agent, but only to the extent that they are indemnified under Policy Extension 3.2 (Consultants, Sub-contractors and Agents).

'You' and 'your' is also used in this Policy to mean one or more of the Insured.

8.9 Insured's Business

Insured's Business shall mean the business which is conducted by the Named Insured:

- (a) as specified in the Schedule; and/or
- (b) as described in the nature of business/activities/professional services question in the Proposal.

If the Named Insured should change its name and there is no other change which materially alters the risk, the Insured's Business will continue to be covered by this Policy.

8.10 Investigation Costs and Expenses

Investigation Costs and Expenses shall mean reasonable legal costs and other expenses incurred by or on behalf of the Insured with our prior written consent (such consent not to be unreasonably withheld) or by us arising out of any attendance by an Insured at any official investigation, examination or enquiry where such attendance relates to the conduct of the professional activities and duties of the Insured's Business and such investigation, examination or enquiry may lead to a recommendation or finding which give rise to a Claim.

'Investigation Costs and Expenses' does not include any fine, penalty or order for the payment of monetary compensation.

8.11 Joint Venture

Joint Venture shall mean the entering into of a venture (by whatever name called) which the Named Insured carries on together with any other person, company, corporation, partnership or other entity not otherwise deemed to be an Insured under this Policy.

8.12 Known Circumstance

Known Circumstance shall mean any fact, situation or circumstance which:

- (a) an Insured knew at any time before this Policy began or before this Policy was amended /endorsed; or
- (b) a reasonable person in the Insured's professional position would have thought, at any time before this Policy began or before this Policy was amended / endorsed,

might result in someone making a Claim against the Insured that might be covered by this Policy or the amendment / endorsement.

For the purposes of this Definition 8.12, 'Insured' does not include 'Employee' (as defined in clause 8.7) or any consultant, sub-contractor or agent (as referred to in sub clause (f) of Definition 8.8 Insured).

8.13 Limit of Indemnity

Limit of Indemnity shall mean the limit of our liability under this Policy as specified in the Schedule.

8.14 Named Insured

Named Insured shall mean the person, persons, partnership, company, corporation or other entity specified as the Named Insured in the Schedule.

8.15 Period of Insurance

Period of Insurance shall mean the period specified in the Schedule.

8.16 Policy

Policy shall mean:

- (a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
- (c) the Proposal.

8.17 Pollutants

Pollutants shall mean:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- (b) any waste materials including materials recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

8.18 Premium

Premium shall mean the premium specified in the Schedule or in any endorsement to the Schedule.

8.19 Proposal

Proposal shall mean the written proposal made by the Insured to us containing particulars and statements which, together with other information provided by the Insured, are considered as incorporated herein.

8.20 Schedule

Schedule shall mean the schedule to this Policy.

8.21 Senior Counsel

Senior Counsel shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

8.22 Subsidiary

Subsidiary shall mean:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- (b) any entity over which a Named Insured is in a position to exercise effective direction or control.

8.23 Taxable Percentage

Taxable Percentage is the Insured's entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that premium.

8.24 Terrorism

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

- (a) involves violence against one or more persons; or
- (b) involves damage to property; or
- (c) endangers life other than that of the person committing the action; or
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

8.25 Zurich

Zurich shall mean Zurich Australian Insurance Limited, ABN 13 000 296 640, AFS Licence No: 232507. Zurich may also be expressed as 'we', 'us', or 'our'.

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Zurich Australian Insurance Limited
ABN 13 000 296 640, AFS Licence No: 232507
Head Office: 5 Blue Street, North Sydney NSW 2060

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

