

# Professional Indemnity Insurance for Design and Construction

Policy Document



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# The Contract of Insurance

## Professional Indemnity Insurance Policy for Design and Construction

The policy, schedule and any endorsements should be read as if they were one document.

The policy is a contract between **You** and **Us**.

**We** will insure **You** under those sections shown in the schedule during any Period of Insurance for which **We** have accepted **Your** premium provided all the terms and conditions of the policy are kept.

Other than where expressly provided in this policy, compliance with all the terms provisions conditions and endorsements of the policy shall be a condition precedent to **Your** right to recover under this policy.

For **Your** own protection **You** are recommended to read **Your** policy and all its Conditions to ensure that it is in accordance with **Your** intentions. **We** would draw **Your** attention specifically to the Exclusions section of the policy.

**We** have agreed to provide policy cover, and have calculated the applicable premium, based on information provided by **You** or on **Your** behalf including but not limited to:

- information provided in any proposal, or otherwise in response to specific questions asked by **Us**;
- information provided and recorded in any Statement of Facts issued to **You**;
- any declarations made by **You** or on **Your** behalf; and/or
- any additional information voluntarily provided.

This is a legal document and should be kept in a safe place.

If these documents do not meet **Your** needs please return them to **Us** or **Your** broker or agent.

## Section 1 – Definitions

Certain words in this policy have special meanings. These meanings are given below and apply where the words appear in **bold**.

### **Business**

Those activities stated in the schedule.

### **Business Partner**

Any person in **Business** with **You** under the terms of a partnership agreement whether express or implied under legislation.

### **Circumstance**

Incident, occurrence, fact, matter, act or omission that may give rise to a **Claim**.

### **Claim**

- (a) a demand for or an assertion of a right to civil compensation or civil damages or an intimation of an intention to seek such compensation or damages.
- (b) any notice of intention to commence legal proceedings against **You** which may be the subject of indemnity under this policy.

### **Continuing Restrictive Condition**

Any condition in this policy, however expressed, that purports to require **You** to do, or not to do, a particular act or acts, or requires **You** to act, or not to act, in a particular manner (and any condition the effect of which is that a given set of circumstances is required to exist or to be maintained or not to exist shall be taken as falling within this definition).

### **Costs and Expenses**

Costs incurred with **Our** written consent for defending any **Claim** for damages which may be the subject of indemnity under this policy.

### **Employee**

Any natural person who is:

- (a) under a contract of service or apprenticeship with **You**
- (b) a labour master or labour only subcontractor or persons supplied by any of them
- (c) self employed
- (d) under a work experience or similar scheme
- (e) hired or borrowed by **You** from another employer

and working for **You** in connection with the **Services** while under **Your** direct control or supervision.

### **Excess**

The amount stated in this policy, the schedule or any endorsement to this policy for which **You** are responsible and which will be deducted from any payment under this policy as ascertained after the application of all other terms and conditions of this policy.

### **Nuclear Installation**

Any installation of such class or description being an installation designed or adapted for:

- (a) the production or use of atomic energy
- (b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation
- (c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

### **Nuclear Reactor**

Any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

### **Pollution or Contamination**

**Pollution or Contamination** of buildings or other structures or of water or land or the atmosphere.

### **Related Entity**

Any individual or entity or its subcontractors or assignees:

- (a) which wholly or partially own, operate or manage **You**
- (b) in which **You** have an ownership interest in excess of 20%
- (c) which is controlled, operated or managed by **You**.

### **Services**

The performance by **You** or on **Your** behalf of any:

- (a) design or specification
- (b) co-ordination of design and or integration of design
- (c) feasibility studies
- (d) technical information calculation
- (e) surveying
- (f) other activity stated in the schedule
- (g) duty to warn of defects in the **Services** of others

provided always that they are undertaken only by or under the direction and direct control of a qualified architect, engineer or surveyor or other person having other relevant professional qualifications or five years experience appropriate to the work undertaken.

### **Territorial Limits**

Worldwide excluding the United States of America or Canada or territories under their jurisdiction.

### **We, Us, Our or Ours**

Zurich Insurance Europe AG ('Zurich').

### **You, Your, Yours or Yourselves**

The person, people (either acting in partnership or on behalf of an unincorporated organisation) or the company stated in the schedule as the insured including **Your** predecessors.

**You, Yourselves** and **Your** predecessors including:

- (a) any current or former **Business Partner**, director, member or principal or any person who becomes a **Business Partner**, director, member or principal during the period of insurance
- (b) any current or former **Employee** or any person who becomes an **Employee** during the period of insurance
- (c) the personal representative of any **Business Partner**, director, member, principal or **Employee** in the event of their death, incapacity, insolvency or bankruptcy
- (d) any retired **Business Partner**, retired director or retired member whilst acting as a consultant to **You**.

## Section 2 – The Cover

**We** will indemnify **You** in respect of all sums which **You** become legally liable to pay as damages and claimants' **Costs and Expenses** in respect of a **Claim** arising out of the conduct of the **Services** within the **Territorial Limits** first made against **You** and notified to **Us** during the period of insurance for:

- (a) any breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by **You** or on **Your** behalf or by any specialist designers, consultants or subcontractors directly appointed by and acting on behalf of **You**. Provided always that any rights of recourse against any specialist designer, consultant or subcontractor directly appointed by and acting on behalf of **You** have not been waived or otherwise impaired
- (b) any breach of professional duty due to any negligent act, error or omission of any specialist designer, consultant or subcontractor in the provision of any **Services** for whom **You** have assumed liability under a novation agreement. Provided always that **We** will only indemnify **You** if their rights of recourse against any specialist designer, consultant or subcontractor have not been waived or otherwise impaired
- (c) any act of libel or slander committed or uttered in good faith by **You**
- (d) unintentional infringement of any intellectual property right, design right, registered design, trademark or patent committed by **You**
- (e) unintentional breach of confidence by **You**
- (f) the consequence of any loss of or damage to records associated with **Services** including computer systems records held by **You** or for which **You** are legally responsible but excluding negotiable instruments of any kind. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **Us** and are held at a separate location

The limit of indemnity includes **Costs and Expenses**.

**Costs and Expenses** other than under clauses 3 and 5 will be subject to any **Excess** unless stated otherwise on the policy schedule.

### 1. Arbitration

**We** will also indemnify **You** in respect of any decision by an arbitrator appointed to resolve a dispute in accordance with the Arbitration Acts, 1954 to 1998 which may otherwise be subject to an indemnity under this policy

It is a condition precedent to **Our** liability under this clause that **You**:

- (i) notify **Us** within 72 hours and during the period of insurance of:
  - (a) the receipt of a notice of intention to arbitrate
  - (b) any matters of which **You** become aware which might reasonably be expected to give rise to a **Claim** against **You** being referred to an arbitrator; and
- (ii) promptly supply **Us** with all details relating to any reference to arbitration including copies of all documentation made available to **You** or subsequently by **You** to the arbitrator; and
- (iii) allow **Us** to appoint advisers; and
- (iv) co-operate with **Us** and any advisers **We** may appoint in the conduct of the arbitration; and
- (v) meet any request, direction or timetable of the arbitrator; and
- (vi) must not agree to accept the decision of the arbitrator as finally determining the dispute without **Our** prior written consent.

**We** will be entitled to pursue legal proceedings or other proceedings in the name of and on behalf of **You** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the arbitrator (to the extent possible) or to stay the enforcement of any such decision, direction, award or exercise of power. **You** will give all such assistance as **We** may reasonably require in relation to such proceedings.

### 2. Costs of Criminal Proceedings

**We** will also indemnify **You** and at **Your** request any principal, **Business Partner**, director, or **Employee** against legal **Costs and Expenses** incurred with **Our** prior consent in the defence of any criminal or civil proceedings first made against **You** and notified to **Us** during the period of insurance that are brought for an alleged breach of:

- (a) the Safety, Health and Welfare at Work (Construction) Regulations 2006.
- (b) the Safety, Health and Welfare at Work Act 2005.
- (c) any other statutory or secondary legislation implementing the Council Directive 92/57/EEC or similar legislation enacted elsewhere in the world

Provided always that:

- (i) the alleged breach arises in the course of **Services** provided by **You**; and
- (ii) the **Circumstances** giving rise to such proceedings could otherwise give rise to an indemnity under this policy; and
- (iii) in **Our** reasonable belief the defence of such proceedings would assist in a defence of any **Claim** against **You** arising from such **Circumstances**.

Any subsequent or concurrent civil action arising out of proceedings notified hereunder will be deemed to be notified in accordance with Condition 3.

For the purpose of this clause the **Excess** will be €3,000.

**Our** liability will not exceed the lower of the limit of indemnity as stated in the schedule in the aggregate and €300,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

### 3. Court Attendance Costs

**We** will also pay **You** the daily rates stated below if any of these people are required to attend court as a witness at **Our** request:

- (1) any principal, **Business Partner** or director €600
- (2) any **Employee** €300

**Our** liability will not exceed €12,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

### 4. Indemnity to Other Persons including Personal Representatives

**We** will also indemnify under the terms of this policy any current, former or retired principal, **Business Partner**, director or **Employee** or in the event of their death any personal representative.

Provided always that:

- (a) **You** would have been entitled to indemnity had the **Claim** been made against **You**; and
- (b) no indemnity will be provided to any person in respect of the consequences of their own fraud, dishonesty or criminal act; and
- (c) any person claiming indemnity:
  - (i) is not entitled to indemnity from any other source; and
  - (ii) was at the time of the incident giving rise to the **Claim** acting within the scope of their authority; and
  - (iii) will be subject to the terms and conditions of this policy in so far as they can apply; and
- (d) **We** have the sole conduct and control of any **Claim**.

### 5. Legal Representation Cover

**We** will also cover any reasonable **Costs and Expenses** necessarily incurred with **Our** written consent for representation at any official examination, enquiry, investigation or other proceedings ordered or commissioned by a body legally empowered to investigate **Your** affairs that are first instigated against **You** and notified to **Us** during the period of insurance and which may otherwise be the subject of indemnity under this policy.

**Our** liability will not exceed €12,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

### 6. Loss of Documents

**We** will also cover reasonable costs incurred by **You** with **Our** consent for the restoration or replacement of records associated with **Your Services** including computer systems records but excluding negotiable instruments of any kind held by **You** or for which **You** are legally responsible which have been accidentally lost or damaged. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **Us** and are held at a separate location.

**Our** liability will not exceed the lower of the limit of indemnity as stated in the schedule in the aggregate and €300,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

### 7. Mitigation Costs

**We** will also with **Our** prior written consent indemnify **You** against any reasonable **Costs and Expenses** necessarily incurred in respect of any action to mitigate a loss or potential loss that would otherwise be the subject of a **Claim** under this policy.

**Our** liability will not exceed the lower of the limit of indemnity as stated in the schedule in the aggregate and €250,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity state in the schedule.

## Section 3 – Exclusions

This policy does not cover:

### 1. Asbestos

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives

### 2. Bodily Injury and Property Damage

liability for:

- (a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from libel and slander
- (b) loss of or damage to property

unless arising out of a breach of professional duty from the provision of **Services** due to any negligent act, error or omission committed or alleged to have been committed by **You** or on **Your** behalf

### 3. Claims by Related Entities

any **Claim** brought by **You** or any **Related Entity** unless such **Claim** emanates from an independent third party

### 4. Collateral Warranty and Contractual Liability

liability arising from any express warranty, guarantee, contractual promise, indemnity, waiver or express agreement given by **You** unless:

- (a) **You** would have been liable even if there had not been any such warranty, guarantee, contractual promise, indemnity, waiver or agreement
- (b) the liability arises from a collateral warranty or duty of care agreement in which case **We** will not indemnify **You** for liability arising from:
  - (i) any fitness for purpose guarantee
  - (ii) any greater or longer lasting benefit than that given to the party with whom **You** originally contracted
  - (iii) any express guarantee including any relating to performance or the period of a project
  - (iv) **Your** agreement to exercise a standard of care greater than would normally be implied by common law or statute

### 5. Cost Estimates

liability arising out of any estimate provided for construction or design costs unless provided by a chartered quantity surveyor

### 6. Courts Jurisdiction

any **Claim** made or brought:

- (a) in the United States of America or Canada or territories under their jurisdiction
- (b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

### 7. Criminal or Malicious Acts

liability arising out of any criminal, fraudulent or malicious act, error or omission committed by **You** or on **Your** direction

### 8. Directors and Officers Liability

liability while **You** are carrying out the duties of:

- (a) a director or officer of **You** or any other body corporate
- (b) a trustee of any pension fund or any other employee benefit scheme

### 9. Employment

- (a) liability arising out of death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any **Employee**
- (b) liability arising out of any obligation owed by **You** as an employer or potential employer to any **Business Partner**, director, **Employee** or applicant for employment

### 10. Failure to Effect or Maintain Insurance

liability arising out of the advising, requiring, obtaining or maintaining of any form of insurance, suretyship or bond or the failure to do so

### 11. Financial Investment

liability arising out of any activities regulated by the Central Bank of Ireland or any advice or **Services** relating to the financing or investment for any project, scheme or venture



### 12. Insolvency

liability arising out of **Your** insolvency or bankruptcy or awareness of financial difficulties or that of any of **Your** subcontractors. However this exclusion will not apply to any **Claim** or **Circumstance** that would be covered under this policy but for the insolvency, bankruptcy or awareness of financial difficulties of **You** or **Your** subcontractors

### 13. Joint Ventures

liability arising out of **Your** involvement in any joint venture, consortium or other profit sharing scheme unless a **Claim** emanates from **Your** acts or omissions provided always that **We** will not be liable for any **Claim** made by any associated party within the joint venture, consortium or other profit sharing scheme unless such **Claim** emanates from an independent third party

### 14. Liquidated or Punitive Damages or Fines

any amount in respect of:

- (a) liquidated damages, penalties or fines which attach solely because of a contract or agreement
- (b) punitive or exemplary damages

### 15. Market Fluctuation

liability arising out of any:

- (a) depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets
- (b) express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments

### 16. Nuclear and War Risks and Government or Public Authority Order

death, injury, disablement or loss or damage to any property or any loss or expense resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any **Nuclear Installation, Nuclear Reactor** or other nuclear assembly or nuclear component thereof
- (c) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- (d)
  - (i) war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power
  - (ii) nationalisation, confiscation, requisition, seizure or destruction by any government or public authority

### 17. Pollution or Contamination

liability arising directly or indirectly out of **Pollution or Contamination** other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the period of insurance

### 18. Prior Circumstances and Claims

liability arising from:

- (a) any **Circumstance**, fact, matter or occurrence that:
  - (i) **You** knew or that in **Our** reasonable opinion **You** ought to have known prior to inception of this policy which might give rise to a **Claim** against **You**
  - (ii) was notified by **You** under any other insurance policy prior to inception of this policy
  - (iii) was disclosed or in **Our** reasonable opinion ought to have been disclosed on **Your** latest proposal to **Us**
- (b) any **Claim** made against **You** prior to inception of this policy

### 19. Products and Buildings

liability arising out of any:

- (a) supply, repair, alteration, manufacture, installation or maintenance of goods, materials or products
- (b) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures

by **You**, **Your** subcontractor or any **Related Entity** unless such **Claim** is the direct consequence of any negligent act, error or omission arising out of the performance of **Services**

- (c) defective materials or goods or equipment or products **You**, **Your** subcontractor or a third party have supplied, manufactured, sold or distributed

#### **20. Project Specific Insurance**

liability arising out of any project that is insured under a project specific insurance policy provided always that this exclusion will not apply where cover has been provided with **Our** prior written consent and **Your** liability is in excess of the limit of indemnity under such project specific insurance

#### **21. Property and Transport**

liability arising out of the ownership, possession or use by **You** or on **Your** behalf of any land, building, aircraft, watercraft, or mechanically propelled vehicle

#### **22. Retroactive Date**

liability for any **Claim** arising from the **Services** provided by **You** prior to the retroactive date stated in the schedule

#### **23. Sanctions**

nor will **We** be liable to make any payment or provide any service or benefit to **You** or any other party to the extent that such cover, payment, service or benefit would violate any applicable trade or economic sanctions law or regulation

#### **24. Supervision of Construction Work**

liability arising out of any supervision by **You** of **Your** own work, **Your** subcontractors' work or the work of any **Related Entity** where such supervision is undertaken in **Your** capacity as building or engineering contractor

#### **25. Terrorism**

loss, damage, consequential loss, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- (a) 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 whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:
  - (i) involves violence against one or more persons
  - (ii) involves damage to property
  - (iii) endangers life other than that of the person committing the action
  - (iv) creates a risk to health or safety of the public or a section of the public
  - (v) is designed to interfere with or to disrupt an electronic system
- (b) any action in controlling, preventing, suppressing, retaliating against or responding to any act or preparation in respect of action or threat of action described in a) above.

In any action or suit or other proceedings where **We** allege that by reason of this exclusion cover is not provided under this policy the burden of proving that cover is provided under this policy will be upon **You**

#### **26. Valuation Reports**

any valuation report prepared by **You** or on **Your** behalf except for the purpose of measuring quantities or certifying payments due to contractors

#### **27. Virus or Similar Mechanism, Hacking or Denial of Service Attack**

liability arising out of:

- (a) program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations whether involving self-replication or not including but not limited to trojan horses, worms and logic bombs
- (b) unauthorised access to any computer or other equipment or component or system or item which processes, stores, transmits, retrieves or receives data
- (c) any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network **Services**, network connectivity or information systems including but not limited to the generation of excess network traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

## Section 4 – Provisions

### 1. Discharge of Liability

**We** may at any time pay the maximum amount payable under this policy after deduction of any sum already paid or any lower amount for which any **Claim** can be settled and then relinquish the conduct and control and be under no further liability in respect of the **Claim** except for the payment of **Costs and Expenses** incurred with **Our** written consent prior to the date of such payment.

### 2. Joint Liabilities

If **You** comprise more than one party **We** will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if **You** comprised only one party and in any event will not exceed the limit of indemnity stated in the schedule.

### 3. Limit of Indemnity

The limit of indemnity stated in the schedule is **Our** monetary limit and applies in the aggregate to all **Claims** including **Costs and Expenses** made in any one period of insurance.

Where **You** become liable to pay a sum in **Excess** of the amount of indemnity available under this policy **We** will pay only the proportion of any **Costs and Expenses** that the available amount of indemnity bears to **Your** total liability.

### 4. Senior Counsel

**You** will not be required to contest any legal proceedings unless a Senior Counsel or similar authority agreed upon by **You** and **Us** advises that on the facts of the case concerned such **Claim** could be contested with a reasonable prospect of success.

## Section 5 – Conditions

### 1. Arbitration

If any dispute arises under the policy, the dispute will be referred to an arbitrator. Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitrator Acts 1954 to 1998, or any Enactment amending same. The arbitrator will be appointed jointly by **You** and **Us** in accordance with the law at the time. **You** may not take any legal action against **Us** over the dispute before the arbitrator has reached his decision. The making of an award will be a condition precedent to any right of action against **Us**. **Claims** not referred to arbitration within 12 calendar months from the date of disclaimer of liability shall be deemed to have been abandoned. The making of an award will be a condition precedent to any right of action against **Us**.

### 2. Cancellation

**We** may cancel this policy by giving 30 days notice in writing by special delivery mail to **You** at **Your** last known address and in such event **You** will be entitled to a return of premium in respect of the unexpired portion of the period of insurance.

### 3. Claims Procedures

#### (a) Your Responsibilities

It is agreed that:

- (i) on the happening of any **Circumstance** which could give rise to a **Claim** or on receiving verbal or written notice of any **Claim** **You** will:
  - (1) as soon as reasonably possible give notice to **Us** in writing; and
  - (2) as soon as reasonably possible forward to **Us** any notice of prosecution, inquest or fatal inquiry and every letter, **Claim**, writ or summons issued against **You**; and
  - (3) take action to minimise the loss or damage and to avoid interruption or interference with the **Business** and to prevent further damage or injury; and
  - (4) at **Your** own expense and as soon as reasonably possible supply full details of the **Claim** in writing to **Us** together with any evidence and information that may be reasonably required by **Us** for the purpose of investigating or verifying the **Claim** (including by responding to reasonable requests for information in an honest and careful manner).
- (ii) no settlement, admission of liability, payment or promise of payment will be made to a third party without **Our** written consent.

#### (b) Our Rights

**We** will:

- (i) be entitled to take over the defence or settlement including the appointment of legal counsel for any **Claim** made against **You** or any person entitled to indemnity under this policy and **You** will give all assistance as may be reasonably required by **Us**; and
- (ii) have the right to make the final determination in relation to coverage or handling of the whole or part of any **Claim**, however, **We** will engage with **You** during **Our** investigation of the **Claim** and give the **You** the opportunity to submit to **Us** any relevant evidence which could inform **Our** determination as regards the **Claim**; and
- (iii) subject to Condition 14 of this policy, be entitled to take the benefit of any of **Your** rights against any other party before or after **You** have received indemnification under this policy and **You** will give all assistance as may be reasonably required by **Us**; and
- (iv) treat any **Circumstances** which might give rise to a **Claim** notified during the period of insurance which subsequently gives rise to a **Claim** after the expiry date as a **Claim** first made during the period of insurance.

### 4. Contractual Right of Renewal (Tacit)

If **You** pay the premium using **Our** direct debit instalment scheme **We** will have the right which **We** may choose not to exercise to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms and conditions of this policy including the premium at renewal. If **You** do not wish to renew this policy **You** or **Your** insurance intermediary must notify **Us** prior to the next renewal date.

## 5. Fraudulent Claims

If a **Claim** contains information that is false or misleading in any material respect and **You** either know that it is false or misleading or consciously disregards whether it is false or misleading, or a **Claim** is otherwise fraudulent in any respect, (**Fraudulent Claim**) **We** shall be entitled to:

- (a) refuse to pay the **Claim**; and
- (b) terminate the policy by written notice in which case cover under the policy shall be treated as having terminated with effect from the date on which the **Fraudulent Claim** was submitted.

In such circumstances of termination **We** shall refuse all liability to **You** under the policy in respect of any **Claim** made after the date of submission of the **Fraudulent Claim** (but not in respect of any **Claim(s)** made before submission of the **Fraudulent Claim**) and **We** need not return any of the premiums paid under the policy.

## 6. Alteration of Risk

**You** must tell **Us** immediately of any changes to the following provided by **You** to **Us** prior to the commencement or renewal of this policy:

- (a) the information provided in any Proposal Form or otherwise in response to specific questions asked by **Us**;
- (b) the information provided and recorded in any Statement of Fact issued to **You**;
- (c) the declarations made by **You** or on **Your** behalf; and/or
- (d) any additional information voluntarily provided.

When **You** notify **Us** about a change as above, or if **You** otherwise become aware of any such change, as referenced above, **We** may reassess the premium chargeable and policy cover more generally.

**We** may refuse a **Claim** made by **You** where there has been a change in the subject matter of the policy which results in a new risk which **We** did not agree to cover and which was beyond **Our** and **Your** reasonable contemplation when the policy was entered into. Failure to disclose any such change may result in difficulty obtaining insurance in the future.

## 7. Duty to Comply with Policy Conditions

- (a) **You** must comply with the terms, limitations, Exclusions, Conditions and Endorsements of this policy so far as they relate to anything to be done or complied with by **You**, to include **You** cooperating with **Us** in the investigation of insured events, including by responding to reasonable requests for information in an honest and reasonably careful manner.
- (b) Other than where expressly provided in this policy, **Your** compliance with the terms, limitations, Exclusions, Conditions and Endorsements of this policy shall be a condition precedent to any liability on **Our** behalf to make any payment under the policy.
- (c) Breach of any notification-related term or Condition will entitle **Us** to refuse payment of a **Claim** where **We** were prejudiced by the breach of the notification-related term or Condition in question.

## 8. Effect of Continuing Restrictive Conditions

In this policy, any term that imposes a **Continuing Restrictive Condition**, including one that is intended to reduce the risk of a particular type of loss, or reduce the risk of loss occurring at a particular time or in a particular location, shall be treated as a suspensive condition. This means that if:

- (a) **You** breach any such term; and
- (b) during the period of breach **You** suffer a relevant loss; and
- (c) such breach increased, in the circumstances concerned, the risk of the loss suffered by **You**,

**We** will have no liability for the loss.

## 9. Other Insurances

If at the time of any occurrence giving rise to a **Claim** there is any other insurance effected by or on behalf of **You** providing an indemnity in respect of such **Claim** **Our** liability will be limited to its rateable proportion. If any other insurance is subject to any provision whereby it is excluded from ranking concurrently with this policy in whole or in part or from contributing proportionally **Our** liability under this policy will be limited to any **Excess** beyond the amount which would be payable under such other insurance had this policy not been effected.

## 10. Payment by Instalments

Where **We** have agreed to accept payment by instalments, any default in payment on the due date may result in the policy cover being terminated.

### 11. (1) Pre-Contractual Representations

**You** acknowledge and accept the following:

- (a) **You** have a legal duty prior to entering into the policy and/or prior to the renewal of this policy to provide responses to questions **We** ask in relation to the risk(s) to be insured.
- (b) a matter about which **We** ask a specific question is material to the risk undertaken by **Us** or the calculation of the premium by **Us**, or both.
- (c) **You** have a legal duty to answer all questions asked by **Us** honestly and with reasonable care.
- (d) while **We** acknowledge that **You** have no legal duty of voluntary disclosure, **You** shall ensure that information which is voluntarily provided by **You** or on **Your** behalf is provided honestly and with reasonable care.

### (2) Remedies for Misrepresentation

(a) The term “negligent misrepresentation” means a representation made without reasonable care but which was not fraudulent. Where a **Claim** is made under the policy but an answer which was provided, or information which was volunteered, by **You** or on **Your** behalf involves a negligent misrepresentation, the remedy available to **Us** shall reflect what **We** would have done had **We** been aware of the full facts and shall be based on a compensatory and proportionate test, as follows:

- (i) if **We** would not have entered into the policy on any terms, **We** may avoid the policy from inception or renewal (as the case may be) and refuse all **Claims**, but shall return the premium paid;
  - (ii) if **We** would have entered into the policy, but on different terms, the policy is to be treated as if it had been entered into on those different terms if **We** so require;
  - (iii) if **We** would have entered into the policy, but would have charged a higher premium, **We** may reduce proportionately the amount to be paid on the relevant **Claim**.
- (b) Where an answer which was provided, or information which was volunteered, involves a negligent misrepresentation which is identified at a time prior to there being any **Claim** under the policy, **We** may either:
- (i) give **You** notice that in the event of a **Claim** **We** will exercise the remedies in paragraphs (a) (i)-(iii) above as appropriate; and/or
  - (ii) terminate the policy by giving reasonable notice.
- (c) Where a **Claim** is made under the policy but an answer which was provided, or information which was volunteered, by **You** involves a fraudulent misrepresentation, or where **Your** conduct (relative to the policy or the steps leading to its formation) involves fraud of any other kind, **We** shall be entitled to avoid the policy from the date of commencement or renewal (as the case may be) without return of premium.
- (d) Nothing in this clause shall permit **Us** to avoid the policy based on an innocent misrepresentation provided that **You** have discharged **Your** duty to answer questions asked by **Us** honestly and with reasonable care. In this clause, the term “innocent misrepresentation” means a misrepresentation which was neither a negligent misrepresentation nor a fraudulent misrepresentation.

### 12. Reasonable Care

**You** will comply with all regulations imposed by any competent authority and take all reasonable precautions to prevent or minimise **Claims** being made against **You**.

### 13. Sole Agent

It is agreed that:

- (a) if more than one person, company or entity forms **You** the person, company or entity set out as **You** in the schedule will act for itself and be deemed to act as sole agent for every other person, company or entity forming part of **You** and all insured persons, companies or entities are deemed to have consented and agreed that rights of action under this policy are not assignable except with **Our** prior written consent
- (b) **You** have the sole right to file notice or proof of loss or make a **Claim**, adjust, receive or enforce payment of any loss
- (c) payment of any loss to **You** will fully release **Us** in respect of such loss. If **We** agree to make payment to an insured other than **You** such payment will be deemed to have been made to **You**
- (d) **You** have the sole right to bring legal proceedings arising under or in connection with this policy
- (e) knowledge possessed or discovery made by any person, company or entity forming part of **You** or by any **Business Partner**, director or officer, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or discovery made by all other persons, companies or other entities forming part of **You**.

#### **14. Subrogation**

This clause applies where **We** have the right to be subrogated to **Your** rights against some other person but **You** have not exercised those rights and might reasonably be expected not to exercise those rights because **You** and the other person are members of the same family (to be construed in accordance with the Employment Equality Act 1998), or are cohabitants (to be construed in accordance with the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010).

Where in the above circumstances the other person is not insured in respect of their liability to **You**, **We** do not have the right to be subrogated to **Your** rights against that other person.

Where the other person is so insured, **We** may not recover from the other person an amount greater than the amount that that person may recover under their insurance policy.

This clause does not apply where the conduct of the other person that gave rise to the loss involved serious or wilful misconduct.

If the **You** are an employer, **We** will not exercise **Our** right of subrogation against an **Employee** except where the loss was caused by an **Employee** intentionally or recklessly and with knowledge that the loss would probably result.

#### **15. Stamp Duty**

Stamp Duty has been paid or will be paid to the Revenue Commissioners in accordance with the provisions of Section 5 of the Stamp Duties Consolidation Act 1999 or any subsequent amending legislation.

#### **16. Insurance Act 1936**

All monies which become or may become due and payable by **Us** under this policy shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in Ireland.

#### **17. Currency**

It is understood and agreed that the currency of all premiums sums insured indemnities and excesses shown in the schedule of this policy or any renewal notice or endorsement relating thereto are deemed to be Euro.

## Customer Information

### **Law Applicable to this Contract**

The Insurer with which your contract is concluded is Zurich Insurance Europe AG which is established in Ireland. Under the relevant European and Irish Legal Provisions, the parties to this contract of insurance are free to choose the law applicable to the contract. This contract is governed by Irish Law.



## Complaints Procedure

At Zurich, we care about our customers and believe in building long-term relationships by providing quality products combined with a high standard of service. If it should happen that you have cause for complaint, either in relation to your policy or any aspect regarding the standard of our service, please see the steps outlined below.

- If you have arranged your policy with Zurich through a Broker, you should firstly direct your complaint to the Broker with whom you arranged your policy.
- If the matter remains unresolved to your satisfaction you can contact Zurich at (01) 6670666 or alternatively you can write to the Customer Service Co-ordinator at Zurich Insurance, PO Box 78, Wexford, or by email to [customer-care@zurich.ie](mailto:customer-care@zurich.ie).
- If the complaint is still not resolved to your satisfaction, you can write to the Chief Executive Officer at the aforementioned address, or alternatively you may wish to contact:
  - (i) Financial Services and Pensions Ombudsman, Lincoln House, Lincoln Place, Dublin 2, D02 VH29. Telephone: (01) 567 7000. Email: [info@fspo.ie](mailto:info@fspo.ie). Website: [www.fspo.ie](http://www.fspo.ie).
  - (ii) The Central Bank of Ireland, P.O. Box 559, Dublin 1. Telephone: 0818 681 681 or (01) 224 5800.
  - (iii) Insurance Ireland, First Floor, 5 Harbourmaster Place, IFSC, Dublin 1. Telephone: (01) 676 1914.

Your right to take legal action is not affected by following any of the above procedures.

# Data Protection

Zurich Insurance Europe AG ('Zurich', 'we', 'our', 'us') is a member of the Zurich Insurance Group ('the Group'). Zurich is the data controller for this contract under data protection legislation.

For the purpose of this section, 'you' or 'your' shall mean, you, the policyholder, or any other person entitled to indemnity under this policy of insurance.

## About this section

Everyone has rights with regard to the way in which their personal data is handled. During the course of our business activities, we will collect, store and process personal data about you. The purpose of this section is to give you some information about the collection and processing of your personal data. Further information can be obtained in our Privacy Policy which is available at [www.zurich.ie/privacy-policy](http://www.zurich.ie/privacy-policy).

## The Data we collect

Where appropriate, we may collect the following personal data ('Data') from and/or about you:

- **Contact and identifying information** such as title, name, address, email address, telephone number, date and place of birth, gender, marital status, PPS number, VAT number, country of residence, and photographic identification.
- **Financial information** such as bank account details, credit/debit card details and income details.
- **Employment and qualification details** such as occupation, job position, employment and education history.
- **Medical and health details** including information related to personal habits (such as smoking or consumption of alcohol), medical history, details of any disability, injuries sustained and prognosis for recovery.
- **Other sensitive information** such as details of any criminal convictions and offences (including penalty points), civil litigation history as well as pending prosecutions. We may also, in certain cases, receive sensitive information from which it may be possible to infer your trade union membership, religious or political beliefs (for example, if you are a member of a group scheme through a professional, trade, religious, community or political organisation).
- **Information pertaining to the risk insured** such as description of the risk, value of the risk, location of the risk and claims history.
- **Claims data** such as details of the circumstances of any incident giving rise to a claim under this policy, details of activities carried out following any such incident, details of any other claims that you have made, as well as financial, medical, health and other lawfully obtained information relevant to your claim including social welfare information.

The above list covers the main data types collected by Zurich. For further information please see our Privacy Policy at [www.zurich.ie/privacy-policy](http://www.zurich.ie/privacy-policy).

We require this Data in order to manage and administer our relationship with you, evaluate the risk and assess the premium to be paid, validate and settle any claims, bring and/or defend legal proceedings, prevent, detect and investigate fraud, and in order to generally take any steps required to fulfil our contract with you/comply with our legal obligations.

**Note:** If you provide us with Data relating to another person you must first: (a) inform that person about the content of our Privacy Policy and (b) obtain any legally required consent from that person to the sharing of their Data in this manner.

## Data collected from third parties

We may collect Data from third parties if you engage with us through a third party, for example through a broker or, in the case of a group scheme, through your employer. We may also obtain Data from other third parties such as financial institutions, claims service providers (including private investigators) and insurance industry and government bodies for the purposes described above.

## What we do with your Data

We may use, process and store the Data for the following purposes:

- Assessing which insurance products are appropriate for you, risk evaluation, premium setting, policy quotation, premium collection, policy administration, policy renewal, claims assessment, claims processing, claims payment, bringing and/or defending legal proceedings, recovering debt, marketing, survey purposes, statistical analysis, preventing, detecting and investigating fraud, as well as generally taking any steps in order to fulfil our contract with you and comply with our legal obligations.

In order to prevent and detect fraud as well as the non-disclosure of relevant information, Zurich may at any time:

- Share information about you with companies within the Group as well as other organisations outside the Group including, where appropriate, private investigators and law enforcement agencies.
- Check your details with fraud prevention agencies, as well as against databases and other sources of information. Below is a sample of the databases/sources used:
  - the insurance industry claims database known as InsuranceLink maintained by Insurance Ireland (for more information see [www.inslink.ie](http://www.inslink.ie))
  - the Integrated Information Data Service ('IIDS') which allows members of Insurance Ireland to verify information including penalty points and no-claims discount information provided by their customers
  - the National Vehicle and Driver File, maintained and supported by the Department of Transport, Tourism and Sport, containing details of all registered vehicles in the State
  - Motor Insurance Anti-Fraud and Theft Register (MIAFTR) operated by the Association of British Insurers in the UK to log all insurance claims relating to written-off and stolen vehicles in the UK
  - the Companies Registration Office

The above list is not intended to be exhaustive (please see our Privacy Policy for more information).

In addition, we may check the Data you have provided against international/economic or financial sanctions laws or regulated listings to comply with legal obligations or otherwise to protect our legitimate business interests and/or the legitimate interests of others.

#### **Sharing of Data**

We may share your Data (where appropriate/applicable) as follows:

- With business partners, suppliers, subcontractors and agents with whom we work and/or engage (including, but not limited to, tied agents, managing general agents, auditors, legal firms, medical professionals, cloud service providers, private investigators, third-party claim administrators and outsourced service providers) to assist us in carrying out business activities which are in our legitimate business interests and where such interests are not overridden by your interests.
- With other companies in the Group, partners of the Group, coinsurance and reinsurance companies located in Ireland and abroad, including outside the European Economic Area ('EEA'). Where transfers take place outside the EEA, we ensure that they are undertaken lawfully and pursuant to appropriate safeguards.
- With other insurers and/or their agents.
- With any intermediary or third party acting for you.
- In order to comply with our legal obligations, a Court Order or to cooperate with State and regulatory bodies (such as the Revenue Commissioners or the Central Bank of Ireland), as well as with relevant government departments and agencies (including law enforcement agencies).
- On the sale, transfer or reorganisation of our or our Group's business (or any part of it).

For further information regarding the third parties that we may share Data with, please see our Privacy Policy at [www.zurich.ie/privacy-policy](http://www.zurich.ie/privacy-policy).

In addition, information about claims (whether by our customers or third-parties) is collected by us when a claim is made under a policy and placed on InsuranceLink. This information may be shared with other insurance companies, self-insurers or statutory authorities.

The purpose of InsuranceLink is to help us identify incorrect information and fraudulent claims and, therefore, to protect customers. Under data protection legislation you have a right to know what information about you and your previous claims is held on InsuranceLink. If you wish to exercise this right then please contact us at the address below.

Finally, where you have consented to our doing so, we may share information that you provide to companies within the Group and with other companies that we establish commercial links with so we and they may contact you (by email, SMS, telephone or other appropriate means) in order to tell you about carefully selected products, services or offers that we believe will be of interest to you.

### **Data Retention**

The time periods for which we retain your Data depend on the purposes for which we use it. We will keep your Data for no longer than is required or legally permitted. Please see our Data Retention Policy at [www.zurich.ie/privacy-policy](http://www.zurich.ie/privacy-policy).

### **Automated Decision Making and Profiling**

You have a right not to be subjected to decisions based solely on automated processing, including profiling, which produce legal effects concerning you or similarly significantly affects you other than where the decision is:

1. Necessary for entering into a contract, or for performing a contract with you (e.g. your policy of insurance);
2. Based on your explicit consent – which you may withdraw at any time; or
3. Is authorized by EU or Member State law.

Where we base a decision on solely automated decision-making, you will always be entitled to have a person review the decision so that you can contest it and put your point of view and circumstances forward.

### **Data subject rights**

You have the following rights in relation to your Data which is held by us:

1. To ask for details of your Data held by us.
2. To ask for a copy of your Data.
3. To have any inaccurate or misleading Data rectified.
4. To have your Data erased.
5. To restrict the processing of your Data in certain circumstances.
6. To object to the processing of your Data.
7. To transfer your Data to a third party.
8. A right not to be subject to automated decision making.
9. The right to receive notification of a Data breach.
10. Where processing is based on consent, the right to withdraw such consent.
11. The right to lodge a complaint to the Data Protection Commission.

However, these rights may not be exercised in certain circumstances, such as when the processing of your Data is necessary to comply with a legal obligation or for the exercise or defence of legal claims. If you wish to exercise any of your rights in this regard a request must be submitted in writing to our Data Protection Officer (see contact details below). In order to protect your privacy, you may be asked to provide suitable proof of identification before we can process your request.

### **Privacy Policy**

Please note that this Data Protection section is not a standalone section. It contains a brief description of the information you need to understand how your Data is used by us and should be reviewed in conjunction with our Privacy Policy which is available online at [www.zurich.ie/privacy-policy](http://www.zurich.ie/privacy-policy).

If you have any questions about your Data, you can contact our Data Protection Officer, using the contact details below.

- **Zurich Customer Services on 053 915 7775**
- **dataprotectionofficer@zurich.ie**
- **Data Protection Officer, Zurich Insurance Europe AG, FREEPOST, PO Box 78, Wexford, Ireland.**

**Zurich Insurance Europe AG**

PO Box 78, Wexford, Ireland.

Telephone: 01 667 0666 Fax: 01 667 0644

Website: [www.zurich.ie](http://www.zurich.ie)

Zurich Insurance Europe AG is authorised by the Federal Financial Supervisory Authority (BaFin) in Germany and is regulated by the Central Bank of Ireland for conduct of business rules.

Zurich Insurance Europe AG is registered in Frankfurt, Germany (registration number pending) with its registered seat at Platz der Einheit 2, 60327, Frankfurt A.M.

Registered in Ireland as a branch (registration number pending) with registered branch office at Zurich House, Frascati Road, Blackrock, Co. Dublin, A94X9Y3.