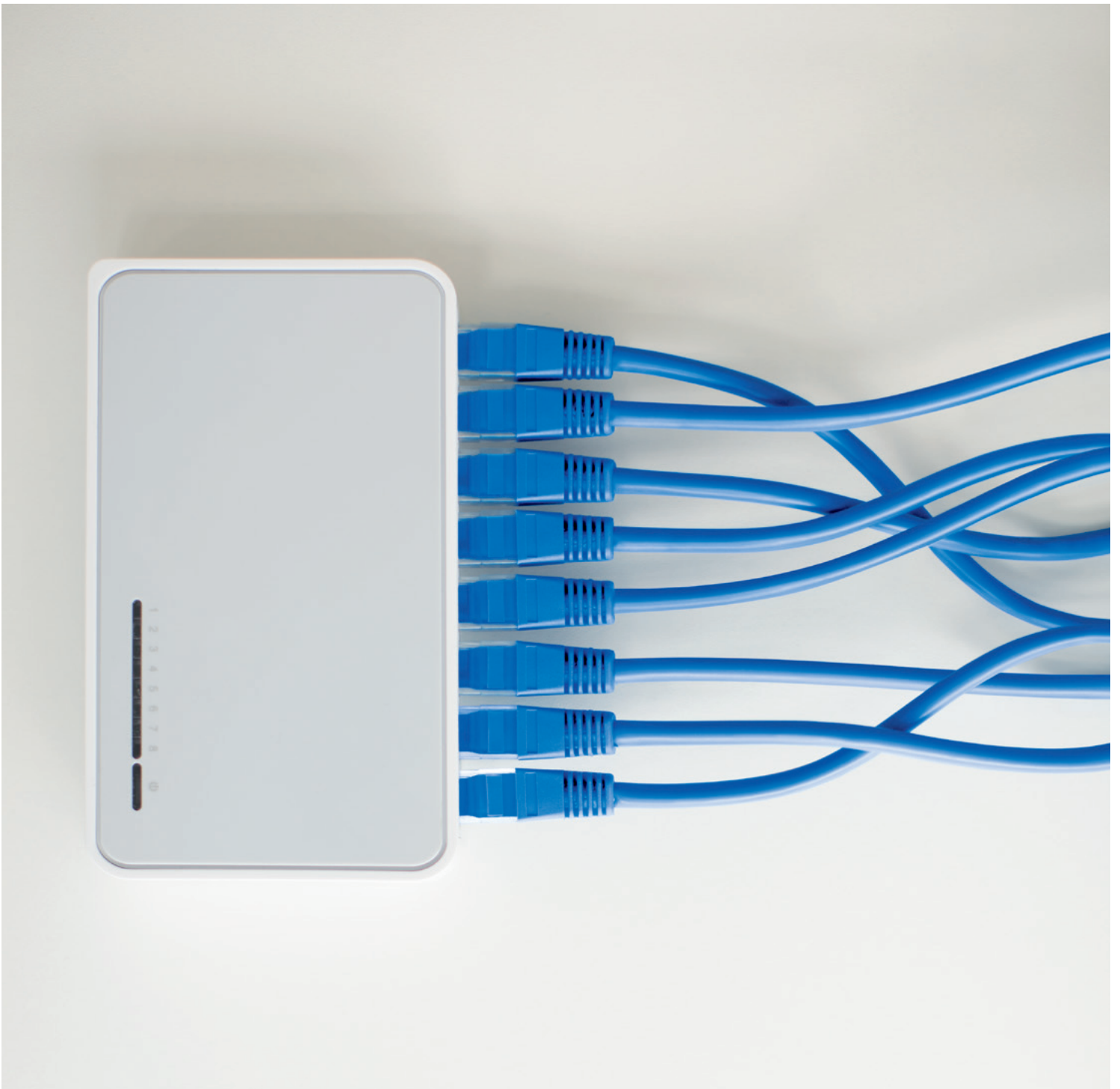


# Professional Indemnity Insurance for the Information Technology Industry

Policy Document



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# The Contract of Insurance

## Professional Indemnity Insurance policy for the Information Technology Industry

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.

### **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.

### **Deliverables**

Any software, hardware, firmware, cabling or electronic equipment.

### **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 **Business** 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 sub-contractors 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**.

### **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) and the company stated in the schedule as the insured including **Your** predecessors.

## 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 **Business** within the **Territorial Limits** first made against **You** and notified to **Us** during the period of insurance in respect of **Your** civil liability.

In addition to the limit of indemnity **We** will pay **Costs and Expenses**.

**Costs and Expenses** other than under clauses 2 and 4 will be subject to any **Excess** unless stated otherwise on the policy schedule.

### 1. Breach of Contract

**We** will also indemnify **You** for any breach of a written contract to design, produce or supply **Deliverables** due to any:

- (a) failure to perform in any material respect with a written specification which forms part of such contract and where it is expressly agreed that the **Deliverables** must comply with such written specification
- (b) material defect in **Deliverables**
- (c) unintentional breach of any implied statutory term relating to the quality, fitness for purpose or safety of **Deliverables**.

### 2. 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:

- (a) any principal, **Business Partner** or director €600
- (b) 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.

### 3. 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.

### 4. 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.

#### **5. Loss of Documents**

**We** will also cover reasonable costs incurred by **You** with **Our** consent for the restoration or replacement of records associated with the **Business** 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.

#### **6. Outstanding Fees**

**We** will also with **Our** prior written consent pay **Your** outstanding fee in circumstances where **Your** client has expressed dissatisfaction with **Your** work and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fee (including amounts **You** are legally obligated to pay subcontractors at the time of the refusal to pay such fee) and threatens to bring a claim against **You** for a sum greater than the outstanding fee but agrees not to pursue such claim if **You** agree not to press for **Your** outstanding fee.

**Our** payment of **Your** outstanding fee will only be made if **We** believe that this will avoid a claim for a greater amount. If following this a claim still arises then the amount paid under this clause will be deducted from the limit of indemnity. If **You** eventually recover the debt then **You** must repay **Us** any amount paid less **Your** reasonable expenses incurred in recovering the debt.

**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 due to any negligent act, error or omission committed or alleged to have been committed by **You**.

### 3. Claims by Related Entities

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

### 4. Competition, Restraint of Trade or Taxation

Liability arising from the breach of any taxation, competition, restraint of trade or antitrust legislation or regulation.

### 5. Contractual Liability

Liability arising from:

- (a) any express warranty, guarantee, contractual promise, indemnity, waiver or express agreement given by **You** unless **You** would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver or express agreement
- (b) any contract or any representations made by **You** or on **Your** behalf where before entering into or extending a contract **You** failed to take reasonable steps to ensure that **You** could fulfil all of **Your** obligations in accordance with the terms of the contract
- (c) any claim where **Your** right of recovery from any third party has been restricted by the terms of any contract entered into by **You**.

### 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 unless:

- (a) committed by any **Employee** which term for the purpose of this clause will not include any principal, **Business Partner** or director of **Yours**; and
- (b) there is no reasonable cause for suspicion in relation to such person

Provided always that:

- (i) in the event of a loss being sustained as a result of any criminal, fraudulent or malicious act, error or omission the amount of indemnity under this policy shall be reduced by an amount equal to the sum of:
  - (1) any monies owed by **You** to any person committing, condoning or contributing to the act or omission
  - (2) any monies held by **You** and belonging to such person; and
- (ii) no person committing, condoning or contributing to any criminal, fraudulent or malicious act, error or omission is entitled to an indemnity under this policy.

## 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. Goods and Services

Liability arising from any contract or arrangement for the supply to or use by **You** of goods or services.

## 11. Insolvency

Liability arising out of **Your** insolvency or bankruptcy. This exclusion will not apply to any claim or circumstance that would be covered under this policy but for **Your** insolvency or bankruptcy.

## 12. Libel and Slander

Liability arising out of any act of libel and slander other than that committed or uttered in good faith by **You**.

## 13. 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.

## 14. 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.

## 15. Obscenity

Liability arising from any obscenity, blasphemy or pornographic material.

## 16. Patents

Liability arising out of the infringement of any patent.

## 17. Pension Liability

Liability arising out of the operation or administration of any pension or other employee benefit scheme.

## 18. 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.

## 19. 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 reasonably be expected to 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.



## 20. 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**.

## 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. Recall Costs

Liability for costs and expenses incurred in the recall, repair or replacement of any service or for **Deliverables** or the refund of any money paid by a third party in connection with the recall of **Deliverables**.

## 23. Retroactive Date

Liability for any claim arising from the **Business** provided by **You** prior to the retroactive date stated in the schedule.

## 24. Sanctions

Notwithstanding any other terms of this policy **We** will be deemed not to provide cover nor will **We** 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.

## 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
  - (vi) 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. Third Party Suppliers

Liability arising out of:

- (a) any inherent defect in **Deliverables** supplied by a third party
- (b) any failure by a third party to supply **Deliverables** or provide any service unless **You** can demonstrate to **Our** satisfaction that the amount is legally recoverable under a written contract with a third party.

## 27. Trading Losses

Liability arising out of any trading loss or trading debt or **Your** liability for VAT or its equivalent.

## 28. 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 to any one claim. Two or more claims arising out of one act, error or omission or a series of related acts, errors or omissions consequent upon or attributable to one source or original cause will be treated as a single claim and will be subject to one limit of indemnity and **Excess**. All such claims will be considered first made on the date on which the earliest claim is first made.

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 reasonably be expected to give rise to a claim or on receiving verbal or written notice of any claim **You** will:
  - as soon as reasonably possible give notice to **Us** in writing; and
  - 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
  - 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
  - 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. (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.

#### 8. 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.

#### 9. 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.

#### 10. 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.

#### 11. 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.

#### 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 the **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 **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, sub-contractors 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.