



Solutions | Stability | Collaboration

# ARCHITECTS & ENGINEERS

Policy Wording 2023

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Thank you for choosing iSure Underwriting for the insurance of your Architects and Engineers Professional Indemnity **Policy**.

iSure offers a range of specialist insurance products to meet the needs of businesses and are passionate about providing exceptional service to **You** when **You** need it.

**Our** specialist expertise and passion is supported by **Our** partnership with leading insurers and this **Policy** is a contract between **You** and the insurers (**Us**) as declared in the **Schedule**.

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## I. INSURING CLAUSES

In return for the premium being paid to the **Insurer**, the **Insured** is indemnified as follows:

### 1. Indemnity

**Damages** and claimant's costs which the **Insured** is legally liable to pay as a result of a claim: (1) first made against the **Insured** during the **Period of insurance** (2) arising out of **Professional business**, and (3) for:

- a) Breach of professional duty
- b) Dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission
- c) Libel, slander or defamation
- d) Unintentional breach of confidentiality, misuse of private information, infringement or interference with rights of privacy or publicity including false light and the public disclosure of private facts including misuse of any information which is either confidential or subject to statutory restrictions
- e) Unintentional infringement of intellectual property rights except patents
- f) The loss of or damage to **Documents**

- g) Any other civil liability not otherwise excluded

The **Insurer's** total liability in the **Period of insurance** under this Insuring Clause shall not exceed the **Indemnity Limit**

### 2. Legal defence costs and expenses

**Defence costs and expenses** provided that:

- a) If the amount paid or agreed to be paid by or on behalf of the **Insured** to dispose of a claim exceeds the **Indemnity limit** the **Insurer** will only be liable for that proportion of the **Defence costs and expenses** which the **Indemnity limit** bears to the amount paid or agreed to be paid
- b) In the event the **Insurer** elects to make a payment to the **Insured** under Notification and Claims under Condition 3.2 then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made

### 3. Costs for prosecuting infringement of the Insured's intellectual property rights

The **Insured's** reasonable and necessary costs and expenses in pursuing a claim: (1) first made by the **Insured** against a third party during the **Period of insurance**, (2) for infringement of the **Insured's** intellectual property rights first discovered by the **Insured** during the **Period of insurance**, and (3) provided that:

- a) the **Insured** has provided to the **Insurer**, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the **Insured's** intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success; and
- b) the **Insurer** has given prior consent in writing, not to be unreasonably withheld

The **Insurer's** total liability in the **Period of insurance** under this Insuring Clause shall not exceed an aggregate limit of €100,000.

### 4. Costs for representation

All reasonable and necessary legal costs incurred by the **Insured** with the **Insurer's** prior written consent for representation at any regulatory or professional inquiry or other proceeding which, in the **Insurer's** sole opinion, relates to the same facts and matters of a claim or **Circumstance** notified to the **Insurer** during the **Period of Insurance**. Costs for Representation cover does not apply to Insuring Clause 3.

The **Insurer's** total liability in the **Period of insurance** under this Insuring Clause shall not exceed an aggregate limit of €100,000.

#### 5. Costs of criminal proceedings

For legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any proceedings brought under the prevailing listed building, building regulation or health and safety legislation and any applicable orders or regulations made under that legislation, or any applicable codes of practice or procedures issued by any governing body concerned with health and safety always provided that:

- a) The act, error or omission giving rise to the proceedings was committed by the **Insured** in the ordinary course of the **Professional business**.
- b) The **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**
- c) The **Insurer** shall have no liability to pay costs incurred (i) subsequent to a plea or finding of guilt on the part of the **Insured**, or (ii) in the event that Counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable
- d) For the purposes of this Insuring clause only the amount of the **Excess** shall be €1,000.

The **Insurer's** total liability in the **Period of insurance** under Insuring Clauses 4) and 5) shall not exceed an aggregate limit of €250,000 and the **Insurer** shall have no liability to pay for the **Insured's** own costs and expenses.

#### 6. Fidelity losses

The **Insured's** direct losses of money, securities or other property resulting from a fraud or dishonest act by an **Employee** acting alone or in collusion with others, which is committed, discovered and notified to the **Insurer** during the **Period of Insurance**, provided that the **Insurer** is satisfied that:

- a) the fraud or dishonest act was conducted by the **Employee** with the intent to cause a loss to the **Insured** and for the **Employee** to obtain an improper benefit either for themselves or others; and

- b) the annual accounts of the **Insured** have been prepared or certified by an independent accountant or auditor; and
- c) at all material times the **Insured** had reasonable internal procedures and processes in place to try and prevent the fraud or dishonest act that was conducted, for example, ensuring that computer-initiated transfer authorities to a bank or financial institution are controlled and authorised by more than one person who have their own unique passwords, and
- d) where it is not possible to identify the individual committing the fraud or dishonest act, the cause of the loss was nonetheless due to the fraud or dishonest act of one or more **Employees**

The **Insurer** shall have no obligation under this Insuring Clause to indemnify loss which constitutes salary, commissions, fee bonuses, promotions, awards, profit sharing, pensions or other benefits earned in the normal course of employment.

The **Insurer's** total liability in the **Period of insurance** under this Insuring Clause shall not exceed an aggregate limit of €50,000.

For the purposes of this Insuring clause only the amount of the **Excess** shall be €1,000.

#### 7. Court attendance

In the event the legal advisors acting for the **Insured** require any **Employee**, principal, partner, member or director of the **Insured** or other relevant party (not including expert witnesses) to attend Court or any arbitration or adjudication hearing as witness of fact in connection with a claim notified to the **Insurer** during the **Period of Insurance**, the **Insurer** will pay compensation to the **Insured** provided that the **Insurer** gives prior written consent at the following rates for each day or part thereof on which attendance is required.

- a) Any principal, partner, member or director of the **Insured** - €250
- b) Any **Employee** - €100

The **Insurer's** total liability to indemnify the **Insured** under these Insuring Clauses shall not exceed the sum stated in the **Schedule** under the heading "Indemnity Limit" regarding any one claim or series of claims arising out of one originating cause regardless of the number of Insuring Clauses that it or they might relate to.

## II. DEFINITIONS

Titles and headings in this policy are just for easy reference and do not change the meaning of the policy. Important words in the policy will be in bold and will have the same meaning every time they appear unless the policy says otherwise.

€

means Euro

### Adjudication Notice

means any adjudication notice under a contract (including a “Notice of Intention” to refer the payment dispute for adjudication under the Construction Contracts Act 2013 and/or the Code of Practice on the Conduct of Adjudications in accordance with section 9 of the Construction Contracts Act, 2013, including any successor or replacement legislation), and “adjudication” and “adjudicator” shall be construed in that context.

### Circumstance

shall mean any circumstance, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a claim against the **Insured** or a claim by the **Insured** under the **Policy**.

### Cladding claim

means any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the combustibility and/ or compliance with fire safety requirements (whether statutory or contractual) of any composite panels, cladding or façades of buildings or structures, and/or internal or external wall systems and any associated core/filler/ insulation material and/or any fixing systems.

### Computer system

means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

### Cyber act

means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **Computer System**.

### Damages

means monetary or other relief for loss caused by a wrongful act of the **Insured** which is insured under this policy.

### Data

means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

### Data protection law

means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as may be amended, updated or re-enacted from time to time).

### Defence costs and expenses

means all reasonable costs and expenses incurred, with the **Insurer's** prior written consent, in the investigation, defence and settlement of any claim first made against the **Insured** or of any **Circumstance** notified to the **Insurer** during the **Period of insurance**. It does not include the **Insured's** own overhead costs and expenses.

### Documents

means digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

### Employee

is any person employed by the **Insured** under a contract of service, including:

- a) any person employed under a training or apprenticeship contract; and
- b) any voluntary worker; and
- c) any locum, seasonal or temporary personnel; and
- d) any self-employed person, who is not an independent contractor; and
- e) any person supplied or remunerated through a contract hire company or agency, who is not an independent contractor but is employed by the contract hire company on a supply only basis, working as a member of the **Insured's** staff

but only if such person is working under the **Insured's** direction, control and supervision.

### Excess

is, unless otherwise stated, the uninsured first amount stipulated in the **Schedule** incurred in respect of a claim and which the **Insured** is required to pay as a condition of cover for that claim. The **Excess** is not payable in respect of **Defence costs and expenses**. The **Indemnity Limit** is additional to the **Excess**, unless otherwise stated.

### Financially associated entity

means:

- a) any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest
- b) any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital
- c) any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director (as defined in s.221 of the Companies Act 2014) of the **Insured**
- d) any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**

### Fire safety claim

means any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the fire safety or fire performance or combustibility of a building or structure or any part of such building or structure, including but not limited to glazing, doors, insulation, cavity barriers, and any component, gasket, composite product or material used in the manufacture, assembly or construction thereof, other than **Cladding Claims**.

### Indemnity limit

means the **Insurer's** total liability to pay **Damages** and claimant's costs and shall not exceed the sum(s) stated in the **Schedule** regarding any one claim or series of claims arising out of one originating cause regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this **Policy**.

### Insured

is any person or firm stated in the **Schedule** and includes any current or previous partner, director, principal, member or **Employee** of any firm or company stated in the **Schedule** and any other person who becomes a partner, director, principal, member or **Employee** of the firm.

### Insurer

means Great American International Insurance (EU) DAC. Great American International Insurance (EU) DAC is authorised and regulated by the Central Bank of Ireland (under registration number C34479). Registered address is Station House, Dublin Road, Malahide, Co. Dublin.

### Jurisdiction

means the jurisdiction stated in the **Schedule**. Where no jurisdiction is stated in the **Schedule** then the **Jurisdiction** shall be Worldwide but excluding the United States of America (including its territories and / or possessions) and Canada.

### Period of insurance

is that as stated in the **Schedule**.

### Personal appointment

is any individual appointment of a professional nature arising out of the ordinary professional activities of the **Insured** other than any appointment as a director or officer of a company or as a trustee.

### Professional business

is the professional services of the **Insured's** business as stated in the **Schedule** including the holding of any **Personal appointment**.

### Schedule

means the document titled **Schedule** that includes the name and address of the **Insured**, the premium and other variables to this **Policy** (including endorsement clauses) and is incorporated in this **Policy** and accepted by the **Insured**. **Schedules** may be reissued from time to time and each successor overrides the earlier **Schedule**.

### Territorial limits

means the territorial limits stated in the **Schedule**.

### Virus

means any unauthorised executable code uploaded to, or replicated through, a **Computer system** or network whether termed a virus or known by any other name and whether it is self-replicating or non-replicating which causes damage or loss to data or the **Computer system**.

## III. EXCLUSIONS

The **Insurer** shall not be liable to indemnify the **Insured** against any claim, loss or expense:

### 1. Employers' liability

arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional

distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal, director, member or **Employee** or applicant for employment.

## 2. Bodily injury and property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such claim arises directly from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**.

## 3. Aircraft, watercraft etc.

arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

## 4. Fraud and dishonesty

arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission committed or condoned by any partner, principal, member or director of the **Insured** or any **Employee**, except as covered by Insuring Clauses 1b and 6.

## 5. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party but only to the extent that such duty is more onerous than any duty that would otherwise be implied by common law or statute, save for any liability arising out of the ordinary course of the **Professional business** in consequence of or arising from entering into any collateral warranty, duty of care agreement or any similar agreement, provided that, in so doing, the **Insured** does not make itself liable:

- a) to provide a level of service or produce a result beyond the scope of any duty that would otherwise be implied by common law or statute; or
- b) to any greater extent or for any longer a period than is the case under the agreement with the person or party with whom the **Insured** originally contracted to perform the same work; or

- c) under any financial guarantee, for any contractual penalty or for liquidated damages

## 6. Goods and products

arising out of or relating to:

- a) goods or products sold, supplied, repaired, altered, manufactured, installed or maintained; or
- b) buildings, building works or physical structures constructed, repaired, installed, erected, removed or demolished, by the **Insured** or any related company or subcontractor of the **Insured**

## 7. Insolvency

arising out of or relating directly or indirectly to the insolvency, liquidation, receivership or bankruptcy of the **Insured**.

## 8. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind.

## 9. Claims or Circumstances known at inception

arising directly or indirectly from any claim or **Circumstance** of which the **Insured** was, or ought to have been, aware prior to inception of this **Policy**, whether notified under any other insurance or not.

## 10. Other insurance

which the **Insured** is, or but for the existence of this **Policy** would be, entitled to indemnity under any other insurance except regarding any excess beyond the amount which is payable under such other insurance.

## 11. Territorial limits

arising from work conducted outside the **Territorial Limits**.

## 12. Jurisdiction

for **Damages**:

- a) brought outside the **Jurisdiction** (including the enforcement within the **Jurisdiction** of a judgment or finding of another court or tribunal that is not within the **Jurisdiction**)
- b) in which it is contended that the governing law is outside the **Jurisdiction**
- c) brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other jurisdiction



### 13. Fines and penalties

for penalties, fines, multiple, exemplary, liquidated or other non-compensatory **Damages** awarded other than in actions brought for libel, slander or defamation in so far as this **Policy** covers them.

### 14. Claims by financially associated entities

made against the **Insured** by any **Financially associated entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any claim brought against such **Financially associated entity** by an independent third party which would, but for this exclusion, be covered by this **Policy**.

### 15. Retroactive date

arising from any act or omission or originating cause that occurred prior to the Retroactive date stated in the **Schedule**.

### 16. Radiation

directly or indirectly caused by or contributed to by or arising from:

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

### 17. War

arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### 18. Terrorism

arising directly or indirectly out of, happening through or in consequence of any act or acts of force or violence for political, religious or other ends directed towards the overthrowing or influencing of any government, or for the purpose of putting the public in fear by any person or persons acting alone or on behalf of or in connection with any organisation.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply.

### 19. Asbestos

arising directly or indirectly out of or resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

### 20. Other appointments

made against any **Insured** in their capacity as:

- a) director or officer of the **Insured** or of any other company or arising out of the management of the **Insured** or of any other company; or
- b) trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise

### 21. Trading losses

arising out of:

- a) any trading loss or trading liability incurred by any business managed or executed by the **Insured** (including the loss of any client account or business)
- b) loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, joint venture partner or similar because of any misstatement or misrepresentation made by the **Insured**
- c) the actual or alleged over-charging or improper receipt of fees by the **Insured**

### 22. Virus

arising directly or indirectly from any **Virus**.

### 23. Patents

arising directly or indirectly from the infringement of any patent.

### 24. Project partnering

arising out of or regarding work conducted by any project partnership of which all or any of the **Insured** form part unless the claim or loss emanates from the acts or omissions of the **Insured**.

### 25. Joint ventures

arising out of or regarding work conducted by or in the name of a consortium of professional people or firms or other association formed of which all or any of the **Insured** form part for the purpose of undertaking any joint venture or any other profit-sharing arrangement unless the claim or loss emanates from the acts or omissions of the **Insured**.



## 26. Valuations

arising from any valuation report prepared by or on behalf of the **Insured** except for the purpose of certifying payments due to contractors or measuring quantities.

## 27. Surveys

arising from any survey unless the survey was conducted by a member of the **Insured** who, at the time of the survey:

- a) had not less than one year's experience in undertaking surveys of a kind related to the survey and was a Registered Architect, a Chartered Engineer or a member of the Society of Chartered Surveyors (SCSI) Ireland; or
- b) had at least five years' experience in undertaking surveys of a kind related to the survey

## 28. Acting as contractor

arising directly or indirectly out of any agreement to provide construction or engineering works, or consultancy or design services where these are provided as part of an agreement to provide construction or engineering works, whether such works are provided by the **Insured** or by any **Financially associated entity** or by any sub-contractor of the **Insured**.

## 29. Financial advice

arising directly or indirectly from the provision by the **Insured** of any investment or financial advice or arrangements made by or on behalf of the **Insured** regarding any finance, credit or leasing agreement.

## 30. Employee benefit schemes / stocks and shares

arising directly or indirectly from the operation or administration of any pension or other employee benefit scheme or trust fund, or the sale or purchase or dealing in any stocks, shares or securities or the misuse of any information relating to them or the breach of any related legislation or regulation.

## 31. Taxation, competition, restraint of trade

arising directly or indirectly from the breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.

## 32. Official action or investigation

arising from any official action or investigation by or decision or order of any public, local or government body or authority except to the extent covered by Insuring Clauses 4 and 5.).

## 33. Loss, damage or destruction of bearer bonds or coupons

arising from the loss, damage or destruction of any bearer bonds, coupons, bank or currency notes, share certificates, stamps or other negotiable paper.

## 34. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach of duty, contract, law or regulation, committed, condoned or ignored by the partners, directors or principals of the **Insured**, except as covered under Insuring Clause 1b).

## 35. Utility provider

arising out of the failure of the service provided by an internet service provider, any telecommunications provider or other utility provider.

## 36. Costs and expenses incurred without prior consent

for costs and expenses incurred without the prior written consent of the **Insurer**.

## 37. Claims by Employees

made against the **Insured** by any present or former **Employee**.

## 38. Cyber and data protection law

- a) directly caused by, directly resulting from or directly arising out of:
  - i) a **Cyber Act**; or
  - ii) any partial or total unavailability or failure of any **Computer System**

provided the **Computer System** is owned or controlled by the **Insured** or any other party acting on behalf of the **Insured** in either case; or
  - iii) the receipt or transmission of malware, malicious code or similar by the **Insured** or any other party acting on behalf of the **Insured**
- b) This **Policy** excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
  - i) to the **Insured** or any other party acting on behalf of the **Insured** by an internet service provider, telecommunications provider or cloud provider but not

including the hosting of hardware and software owned by the **Insured**

- ii) by any utility provider, but only where such failure or interruption of service impacts a **Computer System** owned or controlled by the **Insured** or any other party acting on behalf of the **Insured**
- c) This **Policy** excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the **Insured** or any other party acting on behalf of the **Insured**
- d) Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the **Insured** or any other party acting on behalf of the **Insured** in this **Policy** shall not apply to Data

Save as expressly provided in this exclusion, or by other restrictions in this **Policy** specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under this **Policy** shall be restricted solely due to the use of, or inability to use, a **Computer System**.

### 39. Cladding & Fire Safety

arising from **Cladding Claims** and/or **Fire Safety Claims**.

### 40. Social engineering

arising from fraudulent, malicious or dishonest instructions directed, via any form of electronic communication or telecommunication, to the **Insured**, or any party acting on the **Insured's** behalf, to transfer to any third party any funds to which such third party is not legally entitled.

## IV. SPECIAL NOTIFICATION CONDITIONS

The **Insured** shall comply with the Special Notification Conditions below, the **Insurer** only being liable to indemnify the **Insured** regarding any notification(s) made to the **Insurer** during the **Period of insurance**.

- 1) The **Insured** shall give the **Insurer** written notice within two working days of:
  - a) the receipt of an **Adjudication notice**
  - b) the receipt of any indication, whether in writing or otherwise, of an intention on the part of any party to serve the **Insured** with an **Adjudication notice**

- c) becoming aware of circumstances in which the commencement of an adjudication involving the **Insured** is likely

This notice must be given during the **Period of insurance**.

- 2) The **Insured** must promptly supply the **Insurer** with all details relating to any references to adjudication, including copies of all documentation made available to the **Insured**.
- 3) The **Insured** must:
  - a) allow the **Insurer** to appoint advisors and to have conduct of the adjudication as they deem appropriate
  - b) co-operate with the **Insurer** and their advisors in the conduct of the adjudication
  - c) meet any request, direction or timetable of the adjudicator
  - d) not agree to accept the decision of the adjudicator as finally determining the dispute without the prior written consent of the **Insurer**
- 4) The **Insured's** standard terms and conditions for professional services must contain adjudication provisions which:
  - a) provide that the adjudicator must be independent of the parties to the dispute
  - b) not allow for the adjudicator's decision to finally determine the dispute
  - c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations
  - d) not place restrictions upon the timing of the commencement of legal or arbitration proceedings (for the sake of clarity this does not apply to adjudication proceedings)

### Further condition

The **Insurer** shall be entitled to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. The **Insured** shall give all such assistance as the **Insurer** may require in relation to such proceedings or arbitration.

## V. NOTIFICATION AND CLAIMS CONDITIONS

### 1. Claim/Circumstance notification

- 1.1 The **Insured** shall inform the **Insurer**, in writing, as soon as possible of awareness or discovery during the **Period of insurance** of:-
- any claim made against them
  - any notice of intention to make a claim against them
  - any **Circumstance**
  - the discovery of reasonable cause for suspicion of dishonesty or fraud
- provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, or if the **Insured** renews this **Policy** with the **Insurer**, within 7 days after its expiry.
- Such notice having been given as required in b), c) or d) above, any subsequent claim arising out of such notified matters shall be deemed to have been made during the **Period of insurance**.

#### 1.2 The **Insured**:

- shall not admit liability, make any offer or agree to settle any claim, or incur any costs or expenses in connection with any claim or **Circumstance**, without the prior written consent of the **Insurer**; and
- shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any claim

- 1.3 Every letter of claim, writ, summons or process and all documents relating thereto, and any other written notification of claim shall be forwarded, unanswered, to the **Insurer** immediately they are received. The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may apply.

### 2. Notifications

- 2.1 All notifications must be in writing to or by e-mail to:

The Claims Team  
c/o Kennedys Solicitors LLP, Second Floor  
Bloodstone Building, Sir John Rogerson's Quay,  
Dublin 2, D02 KF24 DX128.

Telephone: +353 1 878 0055

Email: [GAIGclaims@kennedyslaw.com](mailto:GAIGclaims@kennedyslaw.com)

- 2.2 If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

### 3. Conduct of claims

- 3.1 Following notification under condition 1 above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any claim.
- 3.2 If the **Insurer** thinks it necessary the **Insurer** will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. The **Insurer** may appoint the **Insured's** own solicitor but only on a similar fee basis to that offered by the **Insurer's** solicitor and only for work done with the **Insurer's** prior written approval.
- 3.3 Neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.
- 3.4 The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim. The **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.
- 3.5 The **Insurer** shall be subrogated to the **Insured's** rights of recovery against any third party(ies) and the **Insured** shall co-operate and do whatever is necessary to secure such rights. If the **Insured** does not comply with this condition the **Insurer** may deduct any associated additional costs from any payments made under the policy.
- 3.6 If a claim which is only partially covered is made against the **Insured**, the **Insured** will pay the costs of defending the uninsured element of the claim. If the **Insurer** make payments for defence costs incurred in relation to any uninsured claim (a) such sums will be deducted from the **Insurer's** contribution to any final damages settlement; or (b) the **Insured** is liable to re-imburse the **Insurer** within 28 days of the **Insurer** submitting a demand in writing. Defence costs incurred for both the purposes of the insured and uninsured elements of the claim will be reviewed in their entirety

and an appropriate allocation will be made. It is agreed that both the **Insurer** and **Insured** will use best efforts to determine a fair allocation. If a fair allocation cannot be agreed the **Insurer** and the **Insured** agree to follow the dispute resolution process in General Condition 1.

#### 4. Multiple Claims from a single source

All claims and **Circumstances** which arise from the same original cause or event, a single source or a repeated or continuing problem in the **Insured's** work will be treated as a single claim or **Circumstance** regardless of the number of persons claiming Indemnity.

## VI. GENERAL CONDITIONS

### 1. Policy construction and disputes

Any phrase or word in this **Policy** and the **Schedule** will be interpreted in accordance with the laws of the Republic of Ireland. The **Policy** and the **Schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **Policy** or the **Schedule** shall bear such specific meaning wherever it may appear.

All disputes which may arise out of or in relation to this **Policy** can, at either the **Insured's** or the **Insurer's** election, be referred to a Senior Counsel practising at the Irish Bar for determination. The appointment of Senior Counsel is to be mutually agreed between the **Insured** and the **Insurer**, their decision on the issue(s) in dispute will be final and binding on both the **Insured** and the **Insurer**, and the Senior Counsel shall not be asked, and shall not award legal fees or other costs. The cost of Senior Counsel will be borne equally by the **Insurer** and the **Insured**. Otherwise, each shall bear their own costs of the process.

### 2. Waiver of subrogation against employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment caused or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission.

### 3. Dishonest or fraudulent act or omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission

of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act or omission) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this **Policy**.

### 4. Fraudulent claims

If the **Insured** shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then The **Insurer** will:

- i) refuse to pay the whole of the claim; and
- ii) recover from the **Insured** any sums that it has already paid regarding the claim

The **Insurer** may also notify the **Insured** that it will be treating (all sections of) this policy as having terminated with effect from the date of the earliest of any of the fraudulent act. In that event the **Insured** will:

- a) have no cover under the **Policy** from the date of termination; and
- b) not be entitled to any refund of premium

### 5. Cancellation

This **Policy** may be cancelled by or on behalf of the **Insurer** by fourteen days' notice given in writing to the **Insured**.

### 6. Invalidity

If any provision of this **Policy** is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this **Policy** which will remain in full force and effect.

### 7. Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

- a) in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker
- b) in the case of the **Insurer**, to Great American International Insurance (EU) DAC at Station House, Dublin Road, Malahide, Co. Dublin

#### 8. Reasonable steps to avoid loss

Without prejudice to the Notification and Claims Conditions in this **Policy**, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any claim or **Circumstance** notifiable under this **Policy**.

#### 9. Mergers and acquisitions

If during the **Period of Insurance**, the **Insured**:

- a) purchases assets or acquires liabilities from another entity in an amount no greater than 10% of the assets of the **Insured** as listed in its most recent financial statement; or
- b) acquires another entity whose annual revenues are no more than 10% of the annual revenues of the **Insured** for their last completed financial year; and
- c) there is no material deviation to the **Insured's Professional business**; and
- d) prior to the acquisition of the acquired company not being aware of any professional indemnity claims or circumstances that could give rise to a claim then this **Policy** shall automatically include such entity as an **Insured** but only regarding any act or omission occurring on or after the date of merger or acquisition unless otherwise agreed by the **Insurer**

#### 10. Assignment

This policy of insurance (including any benefits it confers provides) are not assignable to any third party without the express approval of the **Insurer** confirmed in writing by the **Insurer**.

#### 11. Change of control

In the event the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurer** may at their absolute discretion agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 11 - Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

The **Insured** shall not be entitled to an indemnity regarding any claims made under this policy of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 11 - Change of control) where the change of control was not reported to the **Insurer** and approved in accordance with this General Condition 11.

#### 12. International Sanctions

The **Insurer** will not provide cover, be liable to pay any claim or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations, regardless of where the applicable sanction is located.

#### 13. Remedies for breach of duty of fair presentation of the risk

The **Insurer** will not:

- a) avoid this policy
- b) seek to rely on any remedy which has the effect of discharging the **Insurer's** liability to provide any indemnity (in whole or in part) under this policy, or
- c) seek to reduce the amount of the indemnity due under this policy

on the grounds of a breach of the duty of fair presentation of the risk to the **Insurer**, provided that the breach was not deliberate or reckless. It shall be for the **Insurer** to establish that the breach was deliberate or reckless.

#### 14. Document review service

Kennedys Solicitors LLP can undertake Professional Indemnity coverage reviews of construction documents, where the **Insured** is acting as a construction professional. Kennedys provide free advice as to whether the terms of the relevant documents potentially prejudice the **Insured's** entitlement to cover or go beyond the scope of cover available under this **Policy**.

- 1) The review service extends to Appointments, Collateral Warranties, and Novation documents only. It does not include, for example, funding agreements, framework agreements, letters of intent, joint venture agreement etc.
- 2) Kennedys are unable to engage in negotiation with any third party over the terms of any



proposed amendment or provide commercial advice. They may, however, clarify/explain the purpose of a proposed amendment if so required. It's a commercial matter for the **Insured** whether it wishes to adopt Kennedys' proposals or not, although the proposed amendments are generally aimed at ensuring any claim would fall within the scope of the **Policy**

Document reviews should be sent to [gaig.reviews@kennedyslaw.com](mailto:gaig.reviews@kennedyslaw.com) and should include a copy of the current policy wording, policy **Schedule** and details of any endorsements/exclusions/conditions. In the event policy material is not provided, comments will be provided on a general basis having regard to the typical provision of a professional indemnity policy.

## 15. USA/Canada

15.1 This Condition only applies where the **Jurisdiction** includes United States of America and/or Canada.

15.2 In the event of a loss, claim or legal proceedings made within the United States of America (including its territories and /or possessions) or Canada the following applies. This includes the enforcement by a court(s) of any other country of any judgement originally obtained in any court(s) of the United States of America (including its territories) or Canada:

- a) The maximum liability of the **Insurer** in the **Period of Insurance** regarding all claims including Defence Costs and expenses is the **USA/Canada Indemnity limit**. This is included within and shall not increase the **Indemnity limit**
- b) The **Insurer** shall not be liable to indemnify the **Insured** against any claim arising directly or indirectly from:
  - i) any punitive or exemplary damages awarded against the **Insured**
  - ii) the Employment Retirement Income Security Act of 1974 and any amendment thereto, or any rules or regulations promulgated thereunder, or successor or replacement legislation
  - iii) any actual or alleged violation of the Racketeer Influenced and Corrupt Organization Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules and regulations promulgated thereunder, or successor or replacement legislation

- iv) any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State law, or successor or replacement legislation, or any common law relating thereto
- v) any actual or alleged violation of the Telephone Consumer Protection Act (TCPA) of 1991, or successor or replacement legislation, or any common law relating thereto
- vi) any actual or alleged violation of the CAN-SPAM Act of 2003, or successor or replacement legislation, or any common law relating thereto
- vii) seepage, pollution, or contamination

15.3 For the purposes of this condition, the following definition is added:

### **USA/Canada indemnity limit**

Means a €2,000,000 aggregate indemnity limit.

Where the **Policy Indemnity limit** is less than €2,000,000, the **USA/Canada Indemnity limit** will be an amount equal to the **Indemnity limit**.

## 16. Complaints

**We** always aim to provide a high standard of service to all our customers. However, there may be times when something leaves you disappointed or dissatisfied.

Please tell us if you are unhappy or have a complaint about any aspect of our service. All feedback we receive from our customers helps us to consider changes so that we can ensure that we continue to meet your expectations both now and in the future.

This insurance is administered on behalf of **Your** insurer by iSure Underwriting. **We** aim to provide a premier service. However, **We** know sometimes things can go wrong.

## VII. HOW TO COMPLAIN

If you wish to complain, please get in touch with us as soon as possible. **You** can contact us by phone, in person, in writing or by e-mail as follows:

If **Your** complaint is about the way **Your Policy** was sold to **You** please contact **Your Insurance Broker** in the first instance. If **Your** complaint is about the **Policy** please contact:

Managing Director  
iSure Underwriting, Unit 5 First Floor,  
Corlurgan Business Park, Corlurgan,  
Ballinagh Road, Cavan H12 TW61

Tel: 00353 (0) 1 695 0370

Email: [complaints@iSureunderwriting.ie](mailto:complaints@iSureunderwriting.ie)

If your complaint is about a claim please contact:

The Complaints Manager  
Great American International Insurance (EU) DAC  
Station House, Dublin Road, Malahide, Co. Dublin.

Telephone: 01 8458412

Email: [gaeucomplaints@gaig.com](mailto:gaeucomplaints@gaig.com)

### How we will handle your complaint

**We** are committed to resolving any complaints fairly and promptly. Striving to minimise your inconvenience, we will listen to your concerns and will seek a solution with you.

The member of our team whom you first contact will discuss your complaint with you and identify what we can do to put it right. The more information you can provide, the quicker we can try to fix the problem.

**Our** promise is to

- Acknowledge complaints promptly and confirm receipt of your complaint within 5 working days
- Investigate complaints quickly. Within 20 days **You** will receive a final response but if your complaint is particularly complicated, it may take longer to remedy. In this case you will receive a letter from us giving you reasons for the delay and an indication of when we expect to resolve your complaint and issue a final response
- If together, we cannot reach an agreement by the end of 40 working days of **Us** receiving **Your** complaint, **You** will receive a final response or, if this is not possible, a reason for the delay plus an indication of when **You** will receive a final response

### How to refer a complaint to the Financial Services and Pensions Ombudsman

If we have given you a response to your complaint and you are still dissatisfied, you may be entitled to refer your complaint to the Financial Services and Pensions

Ombudsman. **We** would, however, appreciate the opportunity to respond to any concerns you may have, in the first instance.

**You** may access more information regarding the Financial Services and Pensions Ombudsman, including how to make a complaint, at the following website: [www.fspo.ie](http://www.fspo.ie)

### Investor Compensation Scheme

The Insurance Compensation Fund in Ireland exists for the protection of consumers. **You** may be entitled to compensation should we be unable to meet our obligations. Further information is available at [www.investorcompensation.ie](http://www.investorcompensation.ie)

### Data Protection and Privacy Summary Statement

As a provider of commercial general insurance, we may collect personal data from our clients, contractors and third parties to assess, underwrite and administer insurance contracts. The privacy of the personal data obtained is very important to us and we are committed to collecting, processing, sharing, storing, and destroying all information in accordance with GDPR and the Irish data protection laws.

**You** can read our full Privacy Notice on our website [www.greatamericaneu.com](http://www.greatamericaneu.com), which goes into more detail about how we collect, use and process personal data, and how, in doing so, we comply with our legal obligations. It also describes your rights as a data subject regarding personal data. **We** would be happy to post you a copy, please contact us on the address below or via the internet contact if you require this.

### Contact and complaints

Should there be any queries with respect to this Data Protection and Privacy Statement please write to:

The Data Protection Officer,  
Great American International Insurance (EU) DAC,  
Station House, Dublin Road, Malahide,  
Co. Dublin, Ireland.

Or alternatively please address **your** query through the contact **us** section of **our** website: <https://www.greatamericaneu.com>

If **you** have a complaint or concern about how **we** use **your** personal data, please contact **us** in the first instance and **we** will do **our** utmost to resolve the issue as soon as possible.

**You** have the right to make a complaint at any time to the Data Protection Commission, the Irish supervisory authority for data protection issues ([www.dataprotection.ie](http://www.dataprotection.ie)).

**We** would, however, appreciate the chance to deal with your concerns before you approach the Data Protection Commission.





Registered Office:

Unit 5 First Floor,  
Corlurgan Business Park,  
Corlurgan, Ballinagh Road,  
Cavan, H12 TW61

**T** 01 695 0370

**E** [info@iSureunderwriting.ie](mailto:info@iSureunderwriting.ie)

**W** [iSureunderwriting.ie](http://iSureunderwriting.ie)