

Directors' and Officers' Liability for Residents' Associations

Policy Document



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The Contract of Insurance

The policy, schedule and any endorsements should be read as if they were one document. The policy details the extent of cover for each of the sections chosen by **You**, the Insured, and the policy conditions and Exclusions. The policy is the contract between **You** and Zurich Insurance Europe AG.

The schedule, which is part of **Your** policy, includes details such as the insured persons, the period of insurance and operative sections and clauses.

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.

Under the relevant European and Irish Legal provisions, the parties to this contract of insurance, we, Zurich Insurance Europe AG and you, the Insured, are free to choose the law applicable to the contract. We propose that this contract is governed by Irish Law.

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.

Directors' and Officers' Liability for Residents' Associations

This is a claims made policy and covers only claims first made during the **Period of Insurance** and notified to **Us** as required by this policy. The contents and section headings are for ease of reference only and do not affect the interpretation of the policy.

Please read this policy carefully. This policy consists of:

- the schedule
- the endorsements (if applicable).

Section 1 – Cover

In consideration of the payment of the premium and subject to all the terms, conditions and limitations of this policy **We** agree with **You** and any **Director or Officer** that:

- a) **We** will pay on behalf of any **Director or Officer** such **Financial Loss** as arises from any **Claim** first made against him or her jointly or severally during the **Period of Insurance** by reason of any **Wrongful Act**.
- b) **We** will reimburse the **Residents' Association** in respect of any indemnity payable to any **Director or Officer** which the **Residents' Association** is legally entitled or obliged to make.
- c) **We** will pay on behalf of the **Residents' Association** such **Financial Loss** as arises from any **Claim** first made against the **Residents' Association** during the **Period of Insurance**.

Special exclusions applying solely to Section 1 c)

We shall not be liable under this policy to make any payment for **Financial Loss** in respect of any **Claim** made against the **Residents' Association** for:

1. the provision of or failure to provide professional services.
2. any breach of any contract or agreement, either oral or written, except to the extent the **Residents' Association** would have been liable in the absence of the contract or agreement.
3. any libel or slander, any form of invasion of privacy, plagiarism or breach of copyright or trademark, patents, database right, registered design or design right.
4. any breach of any regulatory, statutory or common law aimed at preventing monopolies, price discrimination, fixing of prices or other unfair trade practices.
5. any **Claim** brought by and maintained by any past, present, future or prospective employee against the **Residents' Association** based on any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi employment contract, employment related misrepresentation, violation of employment discrimination laws (including work place harassment) wrongful failure to promote, wrongful discipline, wrongful deprivation of a career opportunity, negligent evaluation, invasion of privacy, employment related defamation or employment related infliction of emotional distress.

Payment of **Defence Costs** will be made in accordance with Section 3 of this policy.

Section 2 – Extended reporting period

- 2.1 In the event of non-renewal of this policy **You** shall have the right upon payment of 50% of the premium stated in the schedule to an extension of the **Period of Insurance** in respect of any **Claim** or **Claims** made against any **Director or Officer** during the 365 days after the expiry date of the **Period of Insurance** but only in respect of any **Wrongful Act** committed prior to the expiry date.
- 2.2 The right contained in Section 2.1 shall terminate unless written notice of **Your** intention to purchase the extended reporting period is given to **Us** within 30 days of the expiry date. The additional premium shall be paid promptly.
- 2.3 The offer by **Us** of terms, conditions, limits of liability or premiums at the expiry date of the policy different from those of the expiring policy shall not constitute a refusal to renew.

Section 3 – Defence costs and settlements

It shall be the duty of any **Director or Officer** or the **Residents' Association** against whom a claim is made to take all reasonable steps to defend such **Claim** and not to do anything to prejudice **Our** position.

- 3.1 **We** shall have no duty to defend any **Claim** made against any **Director or Officer** or the **Residents' Association** but shall have the right to be provided with all such information concerning such **Claims** as **We** shall reasonably require and shall be kept fully informed as to all matters relating to or concerning the investigation, defence and settlement of any such **Claim** as may potentially be covered by this policy and shall have the right to receive copies of all relevant documentation relating thereto whensoever created.
- 3.2 No **Director or Officer** or **Residents' Association** shall be required by **Us** to contest any legal proceedings which may be brought unless a suitable legal advisor, mutually agreed upon by the **Director or Officer** or the **Residents' Association** and **Us**, shall advise that the **Claim** should be contested in which event the **Director or Officer** or the **Residents' Association** shall provide all such assistance to those persons representing them in the course of such legal proceedings or as may be reasonably be necessary to contest such legal proceedings.
- 3.3 **We** will make payments of **Defence Costs** as and when such **Defence Costs** fall due. Any payments of **Defence Costs** which have been made by **Us** shall be repaid to **Us** by the person on whose behalf such payments have been made in the event and to the extent that it is established that such person had no entitlement to payment of **Financial Loss** under the terms and conditions of this policy. No **Defence Costs** shall be incurred and no legal representative shall be retained to defend any **Director or Officer** or the **Residents' Association** or to take any step in connection with any legal proceedings as may potentially be covered by this policy and no settlement of any such claim shall be made without **Our** consent, such consent not to be unreasonably withheld.

Section 4 – Acquisition of subsidiaries

- 4.1 **You** shall notify **Us** in writing as soon as possible of the creation or acquisition of any **Subsidiary**. **We** reserve the right to vary the terms of this policy following such notification.
- 4.2 This policy shall not apply in respect of **Claims** arising from **Wrongful Acts** of any **Director or Officer** of any **Subsidiary** committed prior to its acquisition by the **Residents' Association** unless agreed by endorsement hereon.

Section 5 – Definitions

For the purposes of this policy:

- 5.1 **Claim**
 - a) A written demand for compensation, monetary damages or non-monetary relief alleging any **Wrongful Act**
 - b) a civil proceeding, suit or counter-claim for compensation, monetary damages or non-monetary relief commenced by the service of a claim form or similar pleading alleging any **Wrongful Act**
 - c) a formal notice of a criminal proceeding alleging any **Wrongful Act**
 - d) a formal notice of an arbitration proceeding alleging any **Wrongful Act**
 - e) a formal administrative or regulatory proceeding commenced by the service on **You** or an **Director or Officer** of a notice of charges or similar document against **You** or a **Director or Officer** alleging any **Wrongful Act**
 - f) an **Investigation** of **You** when identified in writing by any **Official Body** where a criminal, administrative or regulatory proceeding may be commenced.
- 5.2 **Continuing Restrictive Condition**

Any condition in this policy, however expressed, that purports to require **You** or any **Director or Officer** or the **Residents Association**, to do, or not to do, a particular act or acts, or requires **You** or any **Director or Officer** or the **Residents Association**, 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).

- 5.3 **Defence Costs**
Defence Costs are part of **Financial Loss** and shall mean fees, costs, charges and expenses, other than remuneration payable to any **Director or Officer** or employees of the **Residents' Association**, incurred with **Our** written consent (such consent not to be unreasonably withheld) in the investigation, defence, adjustment, settlement or appeal of any **Claim** or civil or criminal proceedings made or brought against any **Director or Officer**, and in the representation of any **Director or Officer** at any official examination, enquiry, investigation or other proceedings ordered or commissioned at the behest of a body legally empowered to investigate the affairs of the **Residents' Association**.
- 5.4 **Director or Officer**
Director or officer shall mean:
1. any natural person presently or previously appointed or elected by the **Residents' Association** as a **Director or Officer** or subsequently appointed or elected during the **Period of Insurance** whilst acting in such capacity on behalf of the **Residents' Association** and
 2. the legal heirs or representatives of any **Director or Officer** with respect to **Wrongful Acts** committed prior to the death, incapacity, insolvency or bankruptcy of the **Director or Officer** provided that such legal heirs or representatives shall observe and be subject to the terms and conditions of this policy in so far as they can apply and
 3. any employee of the **Residents' Association** who is named as a co-defendant with any **Director or Officer**
 4. **Director or Officer** shall not include any auditor, liquidator, administrator or receiver appointed to the **Residents' Association**.
- 5.5 **Excess**
The amount stated in this policy, the schedule or any endorsement for which **You** will be responsible and which will be deducted from any payment under this policy after all other terms and conditions have been applied.
- The excess will be applicable to **Defence Costs**.
- 5.6 **Financial Loss**
Financial Loss shall mean:
damages, judgments or settlements that any **Director or Officer** or the **Residents' Association** becomes legally liable to pay.
Defence Costs in connection with any **Claim** under this policy.
Financial Loss does not include any of the following: (i) taxes; (ii) social security contributions; (iii) employment related benefits; (iv) fines or penalties imposed by law; (v) disgorgement; and (vi) damages that are uninsurable under the law pursuant to which this policy shall be construed.
- 5.7 **Investigation**
An official examination, enquiry, investigation or other proceeding into **Your** affairs ordered or commissioned by an **Official Body**.
- 5.8 **Limit of Liability**
Limit of Liability as stated in the schedule shall mean **Our** maximum liability in the aggregate payable under this policy in any one **Period of Insurance** for all **Financial Loss** arising from all **Claims** made against any **Directors or Officers** and the **Residents' Association**. The limit of indemnity applies over and above any **Excess**.
- 5.9 **Official Body**
Any regulator, government body, government agency or official trade body or the enforcement arm of such body that is empowered by statute or statutory regulation to investigate the affairs of **You** or an **Director or Officer**.
- 5.10 **Period of Insurance**
Period of Insurance is that period of time shown in the schedule to this policy including any extension thereto agreed in writing by **Us** or extended reporting period provided by Section 2.1 if purchased by **You**.

5.11 **Proposal**

Proposal shall mean:

- (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** or any **Director or Officer** or the **Residents Association**;
- (c) the declarations made by **You** or any **Director or Officer** or the **Residents Association** or on **Your** or any **Director or Officer** or the **Residents Association's** behalf;
- (d) any additional information voluntarily provided to **Us**

The information provided and declarations made in any **Proposal** will be relied upon by **Us** in issuing any policy Statements in the **Proposal** relating to **You** or any **Director or Officer** or the **Residents Association** shall be treated as if made by the **You** or any **Director or Officer** or the **Residents Association** themselves.

In the event that this policy replaces a previous policy issued by **Us** **Proposal** shall mean the **Proposal** form and any attachments thereto and any supplements, statements or material supplied to **Us** at the commencement of the first **Period of Insurance** from which cover has been provided continuously by **Us**, and any renewal declaration and attachments thereto and any supplements, statements or material supplied to **Us** in connection with a renewal.

5.12 **Residents' Association**

Residents' Association shall mean:

1. **You**; and
2. any **Subsidiary** of **You**.

5.13 **Subsidiary**

Subsidiary shall mean:

1. any entity in which **You**:
 - 1.1 hold directly or indirectly more than 50% of the voting rights, or
 - 1.2 appoint a majority of the Board of Directors.
2. any previously owned entity which would at the time of the wrongful act have complied with the requirements of paragraph 5.8.1 and is not at the time of notification of any **Claim** insured by any other valid and collectable policy.

5.14 **Wrongful Act**

Wrongful Act shall mean actual, alleged or attempted breach of duty, breach of trust, breach of warranty of authority, neglect, error misstatement, misleading statement, wrongful trading or any other **Wrongful Acts** or omissions committed or attempted by or allegedly committed or attempted by the **Residents' Association** or any **Director or Officer** whilst acting in this capacity on behalf of the **Residents' Association** or solely by reason of holding such office on behalf of the **Residents' Association** but not whilst acting as a **Director or Officer** of an entity other than the **Residents' Association**.

5.15 **We, Us, Our**

We, Us, Our shall mean Zurich Insurance Europe AG or pertaining to Zurich Insurance Europe AG.

5.16 **You, Your**

You, Your shall mean the legal entity designated in the schedule.

Section 6 – Exclusions

We shall not be liable under this policy to make any payment for **Financial Loss** in respect of any **Claim** made against any **Director or Officer** or the **Residents' Association**:

- 6.1 Arising from, based upon, attributable to or as a consequence of:
1. any **Director or Officer** or the residents' association having gained in fact profit or advantage to which he, she or they had no legal entitlement
 2. any intentionally dishonest or fraudulent act or omission or any wilful violation of any statute, regulation or law by any **Director or Officer** or the **Residents' Association** if a judgment or other final decision establishes such an intentionally dishonest or fraudulent act or omission.

In respect of Exclusion 6.1 the **Wrongful Act** of any **Director or Officer** shall not be imputed to any other **Director or Officer** for the purposes of determining the availability of cover under this policy.

- 6.2 Arising from, based upon, attributable to or as a consequence of any litigation or any official examination, enquiry, investigation or other proceedings ordered or commissioned at the behest of a body legally empowered to investigate the affairs of the **Residents' Association** initiated prior to or pending at the date specified in the schedule or alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, official examination, enquiry, investigation or other proceedings.
- 6.3 Arising from, based upon, attributable to or as a consequence of circumstances prior to the **Period of Insurance** and which have been reported to any previous insurer.
- 6.4 Arising from, based upon, attributable to or as a consequence of any **Wrongful Act** committed outside the Republic of Ireland or in respect of any action brought outside the Republic of Ireland jurisdiction.
- 6.5 Arising from the infringement of obligations imposed by any statute, regulation or common law including but not limited to the Pensions Act, 1990 whilst acting in the capacity of trustee of any pension or superannuation scheme established or maintained by the **Residents' Association** for the benefit of its employees.
- 6.6 For bodily injury, sickness, disease, death or emotional distress or other impairment of health of any person or for loss of or damage to or destruction of material property or loss of its use. Material property shall include information stored on computer.
- 6.7 For:
1. taxes, fines or penalties imposed by law
 2. punitive or exemplary damages or the multiplied portion of any damage award other than exemplary damages awarded in an action for libel or slander.
- 6.8 Arising from, based upon, attributable to or as a consequence of:
1. the actual, alleged or threatened generation, transportation, discharge, emission, dispersal, release, escape, treatment, storage or disposal of pollutants or
 2. any governmental regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

'Pollutants' means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste and any other similar substance of any kind or nature whatsoever including electromagnetic fields. 'Waste' includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

- 6.9 Arising from, based upon, attributable to or as a consequence of:
1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, nuclear reactor or other nuclear assembly or nuclear component thereof
 3. any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
 4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter but this exclusion d) will not apply to radioactive isotopes other than nuclear fuel when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other peaceful purposes.

For the purposes of this exclusion, nuclear installation shall mean:

Any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument 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.

For the purposes of this exclusion, nuclear reactor shall mean:

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.

6.10 By any other **Director or Officer of You** or by **You**.

6.11 Arising out of any dispute between a freeholder and management company where both parties are insured parties.

6.12 Any act of war or terrorism

For the purposes of this exclusion, war shall mean: War, whether declared or not, or any warlike activities including use of military force by any sovereign nation to achieve economic, geographic, nationalistic, political, racial, religious or other ends; any act of war, civil war, invasion, insurrection, revolution, use of military power or usurpation of government of military power; or the intentional use of military force to intercept, prevent or mitigate any known or suspected act of terrorism.

For the purposes of this exclusion, terrorism shall mean:

Actual or threatened use of force or violence directed at or causing damage, injury, harm or disruption, or commission of an act of force or violence dangerous to human life or property, against any individual, property or government, with the stated or unstated objective of pursuing economic, ethnic, nationalistic, political, racial or religious interests, whether such interests are declared or not. Terrorism shall also include any act which is verified or recognised by the Irish Government, or the Government of the country in which a claim is made against any insured person, as an act of terrorism

Section 7 – Conditions

7.1 **Alteration of Risk**

You or any **Director or Officer** or the **Residents Association** must tell **Us** immediately of any changes to the following provided by **You** or any **Director or Officer** or the **Residents Association** 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** or any **Director or Officer** or the **Residents Association**;
- (c) the declarations made by **You** or any **Director or Officer** or the Residents Association or on **Your** or any **Director or Officer** or the Residents Association's behalf; and / or
- (d) any additional information voluntarily provided.

When **You** or any **Director or Officer** or the **Residents Association** notify **Us** about a change as above, or if **You** or any **Director or Officer** or the **Residents Association** otherwise becomes 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** or any **Director or Officer** or the **Residents Association** 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** or any **Director or Officer** or the **Residents Association's** reasonable contemplation when the policy was entered into. Failure to disclose any such change may result in difficulty obtaining insurance in the future.

7.2 Claim Procedures

(a) You or any Director or Officer or the Residents' Association 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** or any **Director or Officer** or the **Residents' Association** will:
 - as soon as reasonably possible give notice to **Us** in writing, and in any event no later than 90 days after the expiry of the **Period of Insurance**; 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** or any **Director or Officer** or the **Residents' Association**; and
 - take action to minimise the loss or damage and to avoid interruption or interference with the business or property and to prevent further damage or injury; and
 - at **Your** or any **Director or Officer** or the **Residents' Association's** 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 **Director or Officer** or the **Residents' Association** or any person entitled to indemnity under this policy and **You** or any **Director or Officer** or the **Residents' Association** 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** or any **Director or Officer** or the **Residents' Association** during **Our Investigation** of the **Claim** and give **You** or any **Director or Officer** or the **Residents' Association** the opportunity to submit to **Us** any relevant evidence which could inform **Our** determination as regards the **Claim**; and
 - (iii) subject to Condition 7.11 of this policy, be entitled to take the benefit of any of **Your** or any **Director or Officer** or the **Residents' Association's** rights against any other party before or after **You** or any **Director or Officer** or the **Residents' Association** have received indemnification under this policy and **You** or any **Director or Officer** or the **Residents' Association** 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**.
- (c) The date of notification to **Us** will be deemed to be the date upon which the resultant **Claim** is first made under this policy.
 - (d) Should a **Director or Officer** or the **Residents' Association** become aware of any circumstances which could give rise to a **Claim** at a later date than written notice to **Us** of such circumstances will be accepted as the date of notification of a **Claim**. Such circumstances shall make reference to the **Wrongful Act** which may give rise to a claim and the material facts which give rise to the belief that a **Claim** may be made.

7.3 Claims series

Written notice shall include but not limited to a description of the **Claim** or circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the **Director or Officer** or the **Residents' Association** first became aware of the **Claim** or circumstances.

When more than one **Claim** arises from one **Wrongful Act** or a series of **Wrongful Acts** each connected causally with another or which shall be by any means interrelated or interconnected there shall be deemed to have arisen one **Claim** alone notwithstanding the number of claims which may be asserted (a 'claims series') and each such claim shall be attributed to the **Period of Insurance** during which the first claim of any **Claims** series has been asserted or made.

7.4 **Duty to Comply with Policy Conditions**

- (a) **You** or any **Director or Officer** or the **Residents' Association** 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** or any **Director or Officer** or the **Residents' Association**, to include **You** or any **Director or Officer** or the **Residents' Association** 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, **You** or any **Director or Officer** or the **Residents' Association's** 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.

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

We will have no liability for the loss.

7.6 **Excess**

We will only pay that amount of **Financial Loss** or loss in respect of each claim that is in excess of the applicable **Excess** stated in the schedule. The **Excess** is not part of **Our Limit of Indemnity** and is to be borne by **You** and will remain uninsured. If more than one **Excess** is applicable to a single claim, then the applicable **Excess** will be applied separately to each part of such **Claim**, but the maximum total **Excess** applicable to such **Claim** will not exceed the largest applicable **Excess**.

7.7 **Fraudulent Claims**

If a **Claim** contains information that is false or misleading in any material respect and **You** or any **Director or Officer** or the **Residents' Association** 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** or any **Director or Officer** or the **Residents' Association** 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.

7.8 **(1) Pre-Contractual Representations**

You or any **Director or Officer** or the **Residents' Association** acknowledge and accept the following:

- (a) **You** or any **Director or Officer** or the **Residents' Association** 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** or any **Director or Officer** or the **Residents' Association** have a legal duty to answer all questions asked by **Us** honestly and with reasonable care.
- (d) while **We** acknowledge that **You** or any **Director or Officer** or the **Residents' Association** have no legal duty of voluntary disclosure, **You** or any **Director or Officer** or the **Residents' Association** shall ensure that information which is voluntarily provided by **You** or any **Director or Officer** or the **Residents' Association** or on **Your** or any **Director or Officer** or the **Residents' Association's** 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 any **Director or Officer** or the **Residents’ Association** or on **Your** or any **Director or Officer** or the **Residents’ Association’s** 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** or any **Director or Officer** or the **Residents’ Association** 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** or any **Director or Officer** or the **Residents’ Association** involves a fraudulent misrepresentation, or where **Your** or any **Director or Officer** or the **Residents’ Association’s** 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** or any **Director or Officer** or the **Residents’ Association** have discharged their 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 fraudulent misrepresentation.

7.9 Representations

Subject to General Condition 7.8 of this policy, the **Proposal** will be construed as a separate **Proposal** for coverage by each insured. Knowledge possessed by any **Director or Officer** will not be imputed to any other **Director or Officer** for the purpose of determining if coverage is available with respect to any **Claim** under this policy.

7.10 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.

7.11 Subrogation

For the purposes of this clause only, the expression “Insured Person” shall mean the Insured (as stated on the Schedule) and any other person entitled to be indemnified under this policy.

This clause applies where **We** have the right to be subrogated to the Insured Person’s rights against some other person but the Insured Person has not exercised those rights and might reasonably be expected not to exercise those rights because the Insured Person 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 the Insured Person, **We** do not have the right to be subrogated to the Insured Person’s rights against that other person.

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

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

If the Insured Person is 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.

7.12 **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.

Section 8 – Arbitration

If any difference shall arise under this policy such difference shall be referred to an Arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf for the time being in force. Where any difference is by this condition to be referred to arbitration the making of an award shall 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.

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, claim 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 your complaint is not resolved by your broker, you can get in touch with us directly by contacting the Customer Services Co-ordinator, Zurich Insurance Europe AG, PO Box 78, Wexford. Telephone (01) 667 0666. Email customersupport@zurich.ie.
- If you deal with us directly, you should contact: Customer Services Co-ordinator, Zurich Insurance Europe AG, PO Box 78, Wexford. Telephone (01) 667 0666. Email customersupport@zurich.ie.

If your complaint is not resolved to your satisfaction, you may avail of your right to refer the matter to the Financial Services and Pensions Ombudsman:

- **Financial Services and Pensions Ombudsman:** Lincoln House, Lincoln Place, Dublin 2, D02 VH29. Phone: (01) 567 7000. Email: info@fspo.ie. Website: www.fspo.ie.

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.

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.

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)
 - 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.

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.

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.

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

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 consumer protection rules.

Zurich Insurance Europe AG is registered in Frankfurt, Germany (registration number 133359) with its registered seat at Platz der Einheit 2, 60327, Frankfurt A.M.

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