

**Dated** \_\_\_\_\_

**The Law Society of England and Wales (1)**  
**Capita Commercial Insurance Services Limited (2)**  
**and**  
..... **(3)**

\_\_\_\_\_  
**Qualifying Insurer's Agreement 2011**  
\_\_\_\_\_



### Details of the Insurer

Company name \_\_\_\_\_

Company /  
syndicate number \_\_\_\_\_

Registered office \_\_\_\_\_  
\_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

Principal contact \_\_\_\_\_

Should contact be via broker only? If yes, place a X here

Commencement Date: 1 October 2011

### Details for service of notice in accordance with clause 15

Address \_\_\_\_\_  
\_\_\_\_\_

Fax \_\_\_\_\_

Contact name \_\_\_\_\_

### Details to appear in Law Society publications

Company/trading  
name \_\_\_\_\_

Postal address \_\_\_\_\_  
\_\_\_\_\_

Contact names: Underwriting

Claims

Telephone \_\_\_\_\_

Fax\*

E-mail address\*

Website address\* \_\_\_\_\_

\* optional

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**THIS AGREEMENT** is made on

**BETWEEN:**

- (1) **THE LAW SOCIETY OF ENGLAND AND WALES**, as established by a Royal Charter in 1845 and currently located at 113 Chancery Lane, London WC2A 1PL (the **Law Society**);
- (2) **CAPITA COMMERCIAL INSURANCE SERVICES LIMITED** (a company registered in England and Wales under number 02845397), whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent BR3 4TU (**Capita**); and
- (3) the company details of which are set out on page i (the **Insurer**).

#### **WHEREAS**

- (A) The Council of the Law Society has, in exercise of its powers under, inter alia, section 37 Solicitors Act 1974 made Rules (in this Agreement referred to as the Rules) concerning indemnity against civil liability incurred by, amongst others, solicitors in private practice in England and Wales.
- (B) Pursuant to the Rules, Firms are required to take out professional indemnity insurance on at least the Minimum Terms with an Authorised Insurer which has entered into a Qualifying Insurer's Agreement with the Law Society.
- (C) The purpose of this Agreement is to set out the terms and conditions on which the Insurer may provide professional indemnity insurance to Firms as required under the Rules and in particular the terms on which it may issue Policies, shall participate in the ARP, shall comply with the Claims Handling Guidelines, and related matters.

#### **IT IS AGREED AS FOLLOWS**

### **1 Definitions and interpretation**

1.1 In this Agreement, unless the context requires otherwise:

**Act** means the Solicitors Act 1974

**ARP** means the arrangements described in Schedule 1 and in the Rules

**ARP Firm** means a Firm which is insured through the ARP under the terms of an ARP Policy

**ARP Manager** means the manager of the ARP, being Capita and/or such person as is appointed from time to time by the Law Society to carry out all or any particular functions of the manager of the ARP in accordance with paragraph 2.1 of Schedule 1, or the Law Society and any such person

**ARP Policy** means a contract of professional indemnity insurance issued by the ARP Manager on behalf of Qualifying Insurers to an ARP Firm, in the form set out in Schedule 2, or as may be prescribed by the Law Society from time to time, and includes an ARP Run-off Policy

**ARP Run-off Policy** means a contract of professional indemnity insurance issued by the ARP Manager on behalf of Qualifying Insurers to a Run-off Firm in the ARP, in the form described in Part 2 of Schedule 2

**Authorised Insurer** means:

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;
- (b) a person who carries on an insurance market activity, within the meaning of section 316(3) of that Act;
- (c) an EEA Firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or

- (d) a person who does not fall within paragraph (a), (b) or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom

where relevant class has the meaning set out in section 87(1B) of the Act and provided that this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act

**business day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of normal business in London

**Claims Handling Guidelines** means the guidelines referred to in clause 7.1 as they may be issued by the Law Society from time to time

**Claims Report** means a report issued in accordance with clause 6.5

**Commencement Date** means the first date on which Policies written by the Insurer may incept, being the date set out on page i

**Firm** has the meaning given in the Rules

**Firm in Default** has the meaning given in the Rules

**Indemnity Period** means the period of one year starting on 1 September 2000, 2001 or 2002, the period of 13 calendar months starting on 1 September 2003, the period of one year starting on 1 October in any subsequent calendar year, or such other period as may be set out in the Rules

**Initial Participation** means, in respect of any Qualifying Insurer, the amount, expressed as a percentage, resulting from the initial calculation made in accordance with paragraph 3.3 of Schedule 1

**Insolvency Event** means in relation to a Qualifying Insurer:

- (a) the appointment of a provisional liquidator, administrator, receiver or an administrative receiver; or
- (b) the approval of a voluntary arrangement under Part 1 of the Insolvency Act 1986 or the making of any other form of arrangement, composition or compounding with its creditors generally; or
- (c) the passing of a resolution for voluntary winding up where the winding up is or becomes a creditors' voluntary winding up under Part IV of the Insolvency Act 1986; or
- (d) the making of a winding up order by the court; or
- (e) the making of an order by the court reducing the value of one or more of the Insurer's contracts under section 377 of the Financial Services and Markets Act 2000; or
- (f) the occurrence of any event analogous to any of the foregoing Insolvency Events in any jurisdiction outside England and Wales

**Liaison Committee** means the committee referred to in clause 8.1

**Minimum Terms** means the minimum terms and conditions with which a Policy is required to comply, being the terms and conditions required from time to time under the Rules

**Percentage Liability** means, in respect of any Qualifying Insurer, the extent to which it is liable to make payments pursuant to the ARP during an Indemnity Period, expressed as a percentage, and calculated in accordance with paragraph 6.2 of Schedule 1

**Percentage Participation** means, in respect of any Qualifying Insurer, the extent to which it participates in the ARP during an Indemnity Period, expressed as a percentage, and calculated in accordance with paragraph 3.5 of Schedule 1

**Policy** means a contract of professional indemnity insurance made between the Insurer (whether alone or together with other Qualifying Insurers) and a Firm complying with the Minimum Terms in accordance with clause 2.3, including (where the context requires) an ARP Policy

**Policy Period** means the period of insurance in respect of which risks may attach under a Policy

**Qualifying Insurer** means any Authorised Insurer which has entered into an agreement with the Law Society to be a Qualifying Insurer which remains in force for the purpose of effecting new Policies

**Records** means all documents and records of the Insurer in whatever form relating to current and expired Policies issued by the Insurer or to which the Insurer has subscribed

**Reporting Protocol** and **Referral Protocol** each means the protocol of that name referred to in clause 6.1 as may be issued by the Law Society from time to time

**Rules** means the SRA Indemnity Insurance Rules 2011 as from time to time modified or amended, the current version of which is set out in Schedule 3

**Run-off Date** means the date referred to in clause 11.4

**Run-off Firm** means a Firm which has ceased to practise in circumstances where, in accordance with paragraph 5.1 of the Minimum Terms, run-off cover is not required to be provided by any Qualifying Insurer

**Run-off Insurer** means an Insurer which has ceased to be a Qualifying Insurer by virtue of clause 11.

- 1.2 In this Agreement, unless the context requires otherwise:
- 1.2.1 references to a clause or schedule are to a clause of, or a schedule to, this Agreement, references to this Agreement include its schedules and references to a part or paragraph are to a part or paragraph of a schedule to this Agreement;
  - 1.2.2 references to this Agreement or any other document or to any specified provision of this Agreement or any other document are to this Agreement, that document or that provision as in force for the time being and as amended from time to time;
  - 1.2.3 the singular includes the plural and *vice versa*, words importing a gender include every gender and references to persons include bodies corporate, partnerships and other unincorporated associations or bodies of persons;
  - 1.2.4 the contents table and the headings to clauses schedules parts and paragraphs are inserted for reference only and shall be ignored in interpreting this Agreement;
  - 1.2.5 a reference to any statute, statutory provision, code or regulation includes:
    - (a) any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made under it; and
    - (b) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it, either before or at the date of this Agreement, or after the date of this Agreement;
  - 1.2.6 references to the Law Society and to the Council include the Solicitors Regulation Authority and any body or person which succeeds in whole or in part to the functions of the Law Society, the Council or

the Solicitors Regulation Authority and any delegate of the Law Society, the Council, the Solicitors Regulation Authority or any such body or person.

## 2 Scope

- 2.1 The Insurer, having agreed to be bound in accordance with the terms of this Agreement, may issue Policies incepting at any time on or after the Commencement Date and before the Run-off Date to Firms on the terms set out in this Agreement.
- 2.2 The Insurer agrees to participate in the ARP in accordance with the terms of Schedule 1 and the Rules, to participate in the arrangements contemplated under Rule 15 in accordance with the terms set out in Schedule 6, and to comply with the Binding Authority in (or substantially in) the form set out in Schedule 8.
- 2.3 Each Policy issued by the Insurer shall provide cover which complies at all times during the currency of the Policy (subject to clause 4.2 with the Minimum Terms in force on the date on which:
- (a) the Policy incepts; or
  - (b) is renewed.
- 2.4 The Insurer shall issue (or procure the issuing of) a Certificate in the form set out in Part A or Part B of Schedule 5 (as the case may require) to each Firm in respect of each Policy issued (or renewed) to that Firm by the Insurer within 20 business days of the inception (or renewal) of the Policy.
- 2.5 Clause 2.3 shall not limit the right of the Insurer to issue any policy of insurance to a Firm in addition to (and without prejudice to the terms of) any Policy required under the Rules to be held by that Firm.
- 2.6 The Insurer may underwrite Policies jointly with one or more other insurers, provided that each insurer underwriting any such Policy is a Qualifying Insurer at the date on which the Policy incepts, and provided that the Policy is fully underwritten by Qualifying Insurers.

Where the Insurer underwrites any Policies jointly on an excess of loss basis, it may do so only in the layers set out below:

Indemnity Limit under Policy	Permitted primary layer(s) under Policy	Permitted excess layer(s) under Policy
£2 million	£1 million	£1 million excess of £1 million
£3 million	£1 million	£2 million excess of £1 million £1 million excess of £1 million
	£2 million	£1 million excess of £2 million

- 2.7 Where the Insurer is the Lead Insurer (as defined in the Minimum Terms) it shall act as such including, without limitation, being responsible for the conduct of claims, advancing defence costs and compromising and arranging for the payment of claims, and it shall be responsible for meeting the reporting requirements set out in clause 6 in relation to the Policy. For the avoidance of doubt, the liability of the Insurer under any Policy shall not be increased by virtue only of the fact that it is acting as Lead Insurer.
- 2.8 The Insurer may not, under the terms on which it offers to issue any Policy or provides any quotation to a Firm, require that that Firm takes out any other policy (of whatever type or description) with the Insurer, or any other person.
- 2.9 In the event of an inconsistency between the Minimum Terms and the terms of any Policy, the Insurer shall not be entitled to construe the Policy in a way that does not give full effect to the Minimum Terms, and shall, if and to the extent required, amend the terms of any Policy so that such Policy does give full effect to the Minimum Terms.

- 2.10 Clause 2.9 shall be directly enforceable against the Insurer by any insured in his own right, where that insured is required under the Minimum Terms to be insured under a Policy with the Insurer, in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy.
- 2.11 Clause 2.10 shall be without limitation to the right of the Law Society and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.

### **3 Warranties, representations and undertakings**

- 3.1 The Insurer warrants and represents to the Law Society that, both as at the date of this Agreement and as a continuing warranty and representation for the duration of this Agreement:
- (a) it is an Authorised Insurer for the purposes of both effecting and carrying out contracts of insurance; and
  - (b) it shall effect and carry out Qualifying Insurance and shall otherwise conduct its operations and activities in relation thereto at all times in compliance with all applicable laws and regulations, including but not limited to applicable provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Sex Discrimination Act 1986, the Disability Discrimination Act 1995 and the Equality Act 2006.
- 3.2 The Insurer undertakes that it shall notify the Law Society in writing immediately if, at any time after the date of this Agreement:
- 3.2.1 the warranty set out in clause 3.1 ceases to be true in any respect; or
  - 3.2.2 it is the subject of an Insolvency Event.

#### **Agency arrangements**

- 3.3 The Insurer undertakes to use its best endeavours to procure that any intermediary acting as its agent in any dealing with a Firm in relation to arranging or effecting a Policy discloses to the Firm, by means of a clear and prominent statement in writing, the fact that it is acting as agent for the Insurer, and whether it does so on an exclusive basis, whether or not it also acts as agent for the Firm.

### **4 Indemnity Period**

- 4.1 Each Policy written by the Insurer shall (subject to clause 4.2) expire at the end of an Indemnity Period, irrespective of the date on which the Policy is written or incepted.
- 4.2 The Insurer may issue a Policy which expires at the end of any Indemnity Period subsequent to the Indemnity Period in which it incepted (a **multi-year Policy**) provided that:
- 4.2.1 the terms of the multi-year Policy permit any variation that may be required in order to reflect any change in the Minimum Terms or in the Rules (whether or not in return for an additional premium), and the Insurer shall give effect to any such variation;
  - 4.2.2 the Insurer shall give effect to any such variation from the date on which the change in the Minimum Terms or in the Rules (as the case may be) comes into effect to the extent required to give effect to that change; and
  - 4.2.3 the Insurer remains a Qualifying Insurer in each of the subsequent Indemnity Periods covered by the multi-year Policy and, as and when required to do so by the Law Society, enters into the standard form Qualifying Insurer's Agreement from time to time in respect of each subsequent Indemnity Period covered by the multi-year Policy.
- 4.3 The Insurer may not issue a Policy with an expiry date earlier than the end of the Indemnity Period in which that Policy incepted.
- 4.4 The Insurer may issue a Policy with an inception date or deemed inception date up to but no more than 30 days prior to the date on which the contract of insurance is made with the Insurer. However,



if the contract is made between 1 October 2011 and 30 October 2011 (both dates inclusive), the Insurer may issue a Policy with an inception date or deemed inception date prior to the date on which the contract is made but no earlier than 1 October 2011.

## **5 Variation**

- 5.1 The Law Society may from time to time vary the terms of any of the Rules, the Minimum Terms or this Agreement, provided that, except in exceptional circumstances, in each case:
- 5.1.1 any such variation shall be effective from the start of the Indemnity Period next following the one in which such variation is notified;
- 5.1.2 any such variation shall be notified in writing to each Qualifying Insurer and (if and to the extent that the Law Society considers it appropriate) to Firms, by no later than two months before the date on which it is to come into effect; and
- 5.1.3 in the case of any variation to this Agreement, the same variation is made to all agreements with Qualifying Insurers and Run-off Insurers.
- 5.2 The Law Society shall, so far as reasonably practicable, present any proposed variation to the Rules, the Minimum Terms or this Agreement to the Liaison Committee for consultation before giving notice of such variation.

## **6 Reporting**

### **General reporting obligations**

- 6.1 If, in the course of dealing with any Firm, the Insurer becomes aware of:
- 6.1.1 a material inaccuracy in a proposal form; or
- 6.1.2 any matter or circumstances that would entitle it to avoid or repudiate a Policy but for the provisions of clause 4.1 of the Minimum Terms (and/or the corresponding terms of the Policy);
- other than, in either case, where the Insurer believes any relevant act or omission on the part of the Firm to have been innocent, or
- if, in the course of dealing with any Firm, the Insurer suspects or becomes aware of dishonesty or fraud on the part of that Firm or any insured under that Firm's Policy and as a result:
- 6.1.3 reserves its position as regards any part of a claim made by that Firm; or
- 6.1.4 notifies that Firm that it will not, or intends not to, indemnify that Firm in full in respect of a claim made by that Firm; or
- 6.1.5 seeks, or reserves its right to seek, reimbursement of any amount paid out under any Policy from any insured,

the Insurer shall notify the Law Society (or such person as the Law Society may notify to the Insurer from time to time) in writing:

- (a) as soon as reasonably practicable after it becomes aware of any of the matters referred to in clauses 6.1.1 to 6.1.2 inclusive; and
- (b) within 5 business days from the date on which the Insurer takes any of the steps referred to in clauses 6.1.3 to 6.1.5 inclusive,

setting out the nature of its awareness or suspicion (and any steps that it has taken as a result of that suspicion), and shall comply with the Reporting Protocol and Referral Protocol in providing the Law Society with such further information relating to the claim and the Firm concerned as the Law Society may reasonably require from time to time so as to enable the Law Society to investigate.

- 6.2 If any Firm fails to pay any sum due to the Insurer in respect of any Policy, and the Insurer has reasonable grounds for believing that such failure constitutes a wilful refusal to pay such sum, the Insurer shall notify the Law Society and the ARP Manager in writing of that fact.
- 6.3 The Insurer shall, within 10 business days of any such request being made in writing by the Law Society from time to time, provide to the Law Society confirmation in writing that:
  - 6.3.1 a specified Firm has taken out a Policy issued by that Insurer;
  - 6.3.2 such Policy is in force or was in force on a particular date and the expiry date of the Policy; and
  - 6.3.3 such Policy complies with the Minimum Terms in force on the date on which such Policy incepted or was renewed or for the time being in force, as the case may require.
- 6.4 The Insurer shall provide to the Law Society such information and data as the Law Society may reasonably require from time to time to enable the Law Society to verify that the Insurer is complying with its obligations under this Agreement, including but not limited to its warranty and undertaking to comply with all applicable laws and regulations, including but not limited to applicable provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Sex Discrimination Act 1986, the Disability Discrimination Act 1995 and the Equality Act 2006. The provisions of clause 16 shall apply in respect of any information provided in accordance with this clause 6.4.

#### **Claims Reports**

- 6.5 The Insurer shall provide a report (a **Claims Report**) to any Firm to which it has issued a Policy, either in the current or in any previous Indemnity Period, within five working days from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:
  - 6.5.1 a summary of each claim (or series of related claims) of which the Insurer is aware made against the Firm under each Policy;
  - 6.5.2 the amount reserved by the Insurer against each claim (or series of related claims);
  - 6.5.3 the basis on which each such amount is calculated (for example, whether the figure represents a loss actually incurred, an estimate of probable maximum loss, or any other basis of reserving);
  - 6.5.4 whether or not each such amount includes defence costs;
  - 6.5.5 whether each such amount includes or is in excess of the amount of any deductible that may apply in relation to such claim (or series of related claims), and the amount of any such deductible; and
  - 6.5.6 any amounts paid out in relation to each claim, in each case indicating whether such sums include any deductible due from but not paid by the Firm.
- 6.6 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 6.5, but shall not be required to provide any part of that information to the extent that doing so would not be reasonably practicable having regard to the manner in which claims information is stored on the computer systems of the Insurer.

#### **Reports on insured Firms**

- 6.7 The Insurer shall provide reports (Insured Firms Reports) to the Law Society by no later than 31 October 2011 and 15 December 2011, listing each insured Firm which has obtained Qualifying Insurance from the Insurer incepting in the current Indemnity Period.
- 6.8 The Insurer shall provide further Insured Firms Reports to the Law Society by no later as at 31 March 2012, 30 June 2012 and 30 September 2012 of any Firms which have obtained Qualifying Insurance from the Insurer for the current Indemnity Period, which were not included on any previous Insured Firms Report issued by the Insurer for the current Indemnity Period.

- 6.9 The form and content of each Insured Firms Report shall be as set out in Schedule 7. If there are no insured Firms required to be included by the Insurer on any Insured Firms Report, the Insurer shall instead provide a statement to that effect.

#### **Run-off Reports**

- 6.10 The Insurer shall provide a report (a **Run-off Report**) to the Law Society and/or Solicitors Indemnity Fund Limited within five business days from being requested to do so, setting out, as at the date specified in the Run-off Report:
- 6.10.1 the name of each Firm in respect of which run-off cover is being provided by the Insurer under a Policy issued either in the current or in any previous Indemnity Period;
- 6.10.2 the date on which the Insurer believes that such run-off cover was triggered; and
- 6.10.3 such other information in relation to such Firms as the Law Society and/or Solicitors Indemnity Fund Limited may reasonably require from time to time.

#### **Successor insurance election**

- 6.11 Where an Insured Firm makes an election pursuant to clause 5.3 of the Minimum Terms, the Insurer shall give notice to the Society in writing of that election not later than seven days after the Insured Firm informs the Insurer of the election and that election has become effective.

### **7 Claims handling and enforcement**

- 7.1 The Insurer shall act at all times in all respects in accordance with any Claims Handling Guidelines, and in particular (but without limitation), the Insurer shall:
- 7.1.1 pay claims without avoidable delay after liability under the Policy has been established and the amount payable by the Insurer has been agreed; and
- 7.1.2 act at all times with the utmost good faith in the course of its dealings both with the solicitors' profession generally and with Firms which are its policyholders.
- 7.2 The Insurer shall not treat any Policy as void, repudiated, terminated or otherwise ineffective by reason of any act or omission on the part of any Firm or any person acting for or on behalf of that Firm if and to the extent that doing so would result in that Firm not having cover in accordance with the Minimum Terms.
- 7.3 Clause 7.2 shall be without prejudice to any rights of reimbursement which the Insurer may have under the terms of any Policy against that Firm or any insured by reason of any such act or omission.

### **8 Liaison committee**

- 8.1 The Law Society shall establish a committee to include, without limitation, representatives from Qualifying Insurers, the Law Society, and the ARP Manager (the Liaison Committee).
- 8.2 The purpose of the Liaison Committee shall include:
- 8.2.1 reviewing the arrangements relating to the provision of compulsory professional indemnity insurance to members of the solicitors' profession generally; and
- 8.2.2 considering proposed amendments to such arrangements, including proposed variations to the Rules, the Minimum Terms or the standard form Qualifying Insurer's Agreement.
- 8.3 The terms of reference relating to the Liaison Committee shall be as determined by the Law Society from time to time.

## 9 Right of inspection

- 9.1 The Insurer shall maintain Records in respect of each Policy until final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of that Policy, or for such longer period as the Law Society may, in the case of any specified Policy, reasonably require.
- 9.2 The Law Society (and its agents and advisers from time to time) shall be entitled to have access to any Records of the Insurer at all times on reasonable notice during normal business hours.

## 10 Co-operation

- 10.1 The Insurer shall at all times co-operate with the Law Society, and with any person or body of persons carrying out any functions on behalf of the Law Society, so as to enable the Law Society to discharge its regulatory functions.
- 10.2 The Insurer authorises the Law Society to publish, whether on any of its websites or otherwise, in such manner and form as it may determine, details of the Insurer, as set out on page i or as the Insurer may advise the Law Society from time to time.

## 11 Term

- 11.1 The Law Society may by giving notice in writing to the Insurer at any time terminate forthwith the right granted to the Insurer under clause 2.1 if:
- 11.1.1 the Insurer is in fundamental breach of its obligations under this Agreement; or
- 11.1.2 either of the events referred to in clause 3.2 occurs; or
- 11.1.3 the Insurer is in material breach of its obligations under this Agreement; and
- (a) (where such breach is capable of being remedied), the Insurer has failed to remedy such breach within such reasonable time as the Law Society has specified; or
- (b) the Insurer has previously been in material breach of its obligations under this Agreement on at least one occasion during the previous six months or on more than one occasion within the previous two years.
- 11.2 The Law Society may by giving not less than 3 months' notice in writing to the other at any time terminate the right granted to the Insurer under clause 2.1. The Insurer may surrender such right in the same manner and on the same notice.
- 11.3 The effect of any notice given under clause 11.1 or 11.2 shall be that:
- 11.3.1 (in the case where notice has been given under clause 11.1) the right granted to the Insurer under clause 2.1 shall terminate on:
- (a) the date of that notice; or
- (b) the date on which either of the events referred to in clause 3.2 occurs (where applicable);
- whichever is the earlier; or
- 11.3.2 (in the case where notice has been given under clause 11.2) the right granted to the Insurer under clause 2.1 shall terminate on the date of the end of the first Indemnity Period ending not less than three months after the date on which notice under clause 11.2 is given.
- 11.4 The date on which the right granted to the Insurer under clause 2.1 terminates in accordance with clause 11.3 shall be referred to as the **Run-off Date**.

- 11.5 With effect from the Run-off Date, the Insurer shall cease to be a Qualifying Insurer and accordingly the Insurer shall not write any Policy which incepts or renews after the Run-off Date, or hold itself out as being a Qualifying Insurer after the Run-off Date.
- 11.6 Clauses 11.1 and 11.3 shall each be without prejudice to the rights of either party under this Agreement either before or after the Run-off Date in respect of any act or omission of any other party under this Agreement, which shall otherwise remain in full force and effect.
- 11.7 This Agreement shall terminate upon the final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of all of the Policies written by the Insurer under this Agreement, but without prejudice to the rights of any party under this Agreement as at that date.

## **12 Disputes as to insurer**

- 12.1 In the event of any dispute arising as to whether a claim is or would be properly payable by the Insurer (whether alone or together with any other Qualifying Insurer or Qualifying Insurers) rather than by any other Qualifying Insurer or Qualifying Insurers, the Solicitors' Indemnity Fund, or the Solicitors' Compensation Fund:
  - 12.1.1 the Insurer shall seek to agree as soon as practicable with each of the other parties which party to the dispute shall conduct any claim, advance defence costs and, if appropriate, compromise and pay any such claim, whether on the basis that the party to whom the claim was first notified should do so or otherwise; or
  - 12.1.2 where the parties to a dispute cannot agree in accordance with clause 12.1.1 who should handle a claim, the ARP Manager shall conduct the claim, advance defence costs and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant Qualifying Insurer (including where applicable the Insurer in its own right or by virtue of its participation in the ARP).

In either case the dispute shall be referred to arbitration in accordance with clause 13, and the Insurer irrevocably consents to any such dispute being arbitrated in a single arbitration with each of the other parties to the dispute participating.
- 12.2 For the purposes of clause 12.1, the Law Society may require the Insurer to provide such information as the Law Society may reasonably require from the Insurer from time to time in relation to any such claim. The Law Society may by notice to the Insurer and, where applicable, the ARP Manager, direct that the ARP Manager shall conduct any such claim, in accordance with the requirements of clause 12.1.
- 12.3 In respect of any claim which is handled by the ARP Manager in accordance with clause 12.1.2, if it is subsequently found, whether as a consequence of arbitration of the dispute or otherwise, that the relevant claim is or would be properly payable by the Insurer (whether alone or together with any other Qualifying Insurer or Qualifying Insurers), then:
  - 12.3.1 the Insurer shall promptly reimburse to the ARP Manager all of the costs and expenses howsoever incurred by the ARP Manager in the conduct of the claim (including where applicable, but without limitation, the amount of any claim paid and associated claimant's costs), together with interest thereon at a rate equal to the base rate from time to time of Barclays Bank plc plus three per cent; and
  - 12.3.2 the Insurer shall take over the conduct of the claim in place of the ARP Manager if it has not already been settled.

## **13 Other disputes and dispute resolution**

- 13.1 Any dispute or claim arising out of or in connection with this Agreement, including any question regarding its validity or termination, shall be determined by a sole arbitrator, to be appointed by agreement between the parties to the arbitration, or failing such agreement within 21 days of a written nomination being made by one of the parties to the arbitration, by the President of the Chartered Institute of Arbitrators. In the case of any dispute referred to arbitration under clause

12.1, the sole arbitrator shall be a Queen's Counsel with experience of disputes arising out of professional indemnity policies.

- 13.2 In the event of the arbitrator becoming unable or unwilling to act as such, any replacement shall be appointed in a like manner to that stipulated in clause 13.1.
- 13.3 The arbitration shall be held in London and the language of the arbitration shall be the English language. The seat of the arbitration shall be in England. It is further expressly agreed that the right to appeal to the High Court or to apply to such court for the determination of a preliminary point of law is excluded.
- 13.4 Within 30 days of the constitution of the tribunal, the claimant shall deliver to the respondent, and to the tribunal, a statement of case containing particulars of the dispute or claim and written submissions in support thereof together with any documents relied upon.
- 13.5 Within 30 days of receiving the claimant's statement of case the respondent shall deliver to the claimant and to the tribunal a statement of case in answer, together with any counterclaim, written submissions in support thereof and any documents relied upon.
- 13.6 Within 30 days of receipt by the claimant by any statement of counterclaim, the claimant may deliver to the respondent, and to the tribunal, a reply to the counterclaim, together with any additional documents relied upon.
- 13.7 As soon as practical after its constitution, and in any event no later than 30 days after receiving the respondent's statement of case or the claimant's reply to the respondent's counterclaim, as the case may be, the tribunal shall convene a meeting with the parties to the arbitration or their representatives to determine the issues to be decided and the procedure to be followed in the arbitration.
- 13.8 The procedure to be followed in the arbitration shall be as agreed by the parties to the arbitration or, in default of agreement, as determined by the tribunal. However, the following procedural matters shall in any event be taken as agreed:
- 13.8.1 the tribunal may in its discretion hold a hearing and make an award in relation to any preliminary issue at the request of any party to the arbitration, and shall do so at the joint request of all of the parties to the arbitration;
- 13.8.2 the tribunal shall hold a hearing, or hearings, relating to substantive issues unless the parties to the arbitration agree otherwise in writing;
- 13.8.3 the tribunal shall issue its final award within 60 days of the last hearing of the substantive issues in dispute between the parties to the arbitration.
- 13.9 In the event of the failure by any party to the arbitration to appear or to present its case within the prescribed time at any stage of the proceedings, or in the event of default by any party to the arbitration in respect of any procedural order made by the tribunal, the tribunal shall have power to proceed with the arbitration and make its award, after giving notice to each party to the arbitration.

## **14 Assignment**

- 14.1 Neither this Agreement, nor any interest in it, shall be assignable by the Insurer in whole or in part at any time and the Insurer undertakes that it will not assign the whole or any part of any interest in the Agreement at any time to any person.
- 14.2 No Policy or any interest in any Policy shall be assignable or transferable by the Insurer except with the prior consent in writing of the Law Society and the Insurer undertakes that it will not assign or transfer the whole or any part of any interest in any Policy at any time to any person.

## **15 Notices**

- 15.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by first-class post pre-paid or by fax, to each of:

- 15.1.1 the Insurer, at the address or fax number set out in and for the attention of the person named on page i;
- 15.1.2 the Solicitors Regulation Authority, at Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD

Fax number 020 7320 5897  
Attention Executive Director of Regulation; and

- 15.1.3 (if appropriate) to the ARP Manager, at 40 Dukes Place, London EC3A 7NH

Fax number 0870 162 4509  
Attention Tracey Garrett;

or to such other address, number or addressee as each party may by notice advise from time to time to each of the other parties, but without prejudice to the effectiveness of any notice already given in accordance with this clause 15.

- 15.2 Any notice given in accordance with clause 15.1 shall be deemed to be given:
  - 15.2.1 if delivered personally, when left at the relevant address referred to in clause 15.1;
  - 15.2.2 if sent by mail, two business days after it was posted;
  - 15.2.3 if sent by fax, on completion of its transmission

provided that if, under the above provisions, any such notice would otherwise be deemed to be given before 9 am or after 5 pm on a business day, or at any time on any other day, such notice shall be deemed to be given at 9 am on the next business day.

- 15.3 In proving the giving of a notice under this clause 15, it shall be conclusive evidence to prove that it was left at the appropriate address or the envelope containing it was properly addressed and posted or the fax was sent in full to the relevant number (as the case may be).

## **16 Confidentiality**

- 16.1 Except as provided in this Agreement, each party shall treat as confidential all information relating to persons insured by the Insurer, where such information would enable that person to be identified, provided that, where the Insurer reports to the Law Society any matter referred to in Rule 17.1 of the Rules:
  - 16.1.1 the Law Society shall keep all such information confidential;
  - 16.1.2 the Law Society shall not (except where and to the extent required by law or in the proper performance by the Law Society of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the Law Society or any of its subsidiaries; and
  - 16.1.3 any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the Law Society or otherwise.
- 16.2 The provisions of clause 16.1 shall not prevent the Law Society making use of any information referred to in that clause for the purpose of bringing disciplinary proceedings against any person.
- 16.3 Notwithstanding any other provision of this Agreement the Law Society may, without limitation and in its absolute discretion, disclose and/or make available for public inspection the identity of the Insurer and any firm to which it provides a Policy pursuant to the terms of this Agreement. Nothing in this Agreement shall prohibit the Law Society from making such a disclosure, nor give rise to any liability of the Law Society, for breach of confidence or otherwise.

## **17 Counterparts**

- 17.1 This Agreement may be entered into in the form of two counterparts each executed by one of the parties but, taken together, executed by both and, provided that the parties so enter into the Agreement, the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

## **18 Entire agreement**

- 18.1 This Agreement (together with any documents referred to in it) sets out the entire agreement and understanding between the parties in connection with the matters described in it. The Insurer acknowledges that it has not entered into this Agreement in reliance on any warranties, conditions, representations, covenants, undertakings, indemnities or other statements (whether implied or otherwise) whatever on the part of the Law Society, the ARP Manager, or any person acting for or on its behalf.

## **19 Third party rights**

- 19.1 Except as provided by clause 2.10 and by paragraph 2.1 of Schedule 1, no third party shall have any rights under or in connection with this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise.

## **20 Applicable law**

- 20.1 This Agreement shall be governed by and construed in accordance with English law.

**IN WITNESS** of which this Agreement has been entered into the day and year first above written.



## **Schedule 1**

### **The Assigned Risks Pool**

An Assigned Risks Pool (**ARP**) shall be established and operated and the ARP Manager shall carry out its functions in accordance with the following paragraphs of this Schedule 1 and the Rules.

#### **1 Participation**

- 1.1 The Insurer shall participate in the ARP throughout each Indemnity Period in accordance with the terms of this Agreement, for so long as it remains a Qualifying Insurer.

#### **2 ARP Manager**

- 2.1 The ARP shall be managed and administered by the ARP Manager. The Law Society may carry out such of the functions of the ARP Manager as it is permitted to by law, and may appoint one or more third parties to carry out some or all of the functions of the ARP Manager as set out in this Agreement or in the Rules on its behalf. Any third party so appointed may directly enforce any rights granted by or under this Agreement to the ARP Manager in accordance with the Contracts (Rights of Third Parties) Act 1999 for the purpose of giving full effect to such appointment. The consent of any such third party shall not be required in respect of any variation or termination of this Agreement.
- 2.2 The Insurer agrees that the ARP Manager may issue an ARP Policy incepting during the relevant Indemnity Period to a Firm where:
- 2.2.1 the Firm has applied to be insured through the ARP; or
- 2.2.2 the Firm is a Firm in Default; and
- 2.2.3 (in either case) the Firm is eligible or is to be regarded under the Rules as being eligible to be so insured; or
- 2.2.4 the Law Society has granted a waiver in accordance with the Rules from the requirement to meet some or all of those criteria.
- 2.3 The Insurer irrevocably appoints the ARP Manager as its agent to:
- 2.3.1 set the premium payable by each ARP Firm in accordance with the Rules;
- 2.3.2 bind the Insurer to the terms of the ARP Policies issued to each ARP Firm in accordance with its Percentage Participation;
- 2.3.3 calculate and adjust (in accordance with paragraphs 3.9 and 9.4) the Insurer's Initial Participation, Percentage Participation and Percentage Liability;
- 2.3.4 issue ARP Policies and related documentation to ARP Firms on behalf of all Qualifying Insurers participating in the ARP, including the Insurer;
- 2.3.5 if agreed in writing by the Insurer and subject to the terms of any agreement made with HM Revenue and Customs for this purpose, collect and account to HM Revenue and Customs for Insurance Premium Tax;
- 2.3.6 receive notice of, negotiate, settle and pay claims on behalf of all Qualifying Insurers participating in the ARP, including the Insurer;
- 2.3.7 recover unpaid premiums and other sums owed by ARP Firms;
- 2.3.8 recover sums owed by Qualifying Insurers;
- 2.3.9 provide data to the Law Society relating to ARP Policies and ARP Firms; and

- 2.3.10 do all things incidental to any of the above and generally to do all such other things as may be necessary or expedient from time to time to facilitate the operation of the ARP.
- 2.4 The Insurer further irrevocably appoints the ARP Manager as its agent to:
- 2.4.1 conduct any claim, advance defence costs and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant Qualifying Insurer (including where applicable the Insurer in its own right or by virtue of its participation in the ARP), in accordance with clause 12.1.2; and
- 2.4.2 to commence, be a party to and be bound by the decision of an arbitration in accordance with clauses 12 and 13.
- 2.5 Where a Firm in Default makes an application to the ARP Manager to enter the ARP, the ARP Manager shall:
- 2.5.1 establish whether that Firm in Default is eligible or regarded under the Rules as being eligible to be insured through the ARP under the Rules or by virtue of any waiver of any provision of the Rules by the Law Society and, if so, issue one or more ARP Policies to that Firm in Default in accordance with the Rules or such waiver (as the case may be); and
- 2.5.2 (except where any such waiver has been granted) notify the Law Society, within 1 business day after the issuing of such ARP Policy/ies, of the identity of the Firm in Default, the fact that it has been or appears to have been carrying on business as a Firm in Default, and whether it has issued the Firm in Default with one or more ARP Policies.
- 2.6 Any ARP Policy issued in accordance with paragraph 2.5.1 shall be treated as incepting on the first day of the Indemnity Period to which it relates or, if later, the first day on which the Firm became a Firm in Default under the Rules, provided that an ARP Run-off Policy shall be treated as incepting on the date on which the Firm became a Run-off Firm.
- 2.7 Where the ARP Manager becomes aware of a Firm which is or appears to be a Firm in Default, but where:
- 2.7.1 the Firm has not made an application to enter the ARP in accordance with the Rules; or
- 2.7.2 the Firm has made an application to enter the ARP but is not eligible or regarded as being eligible under the Rules to enter the ARP (including by virtue of any waiver made under the Rules); or
- 2.7.3 the Firm has made an application to enter the ARP as a Run-off Firm and, in respect of any Indemnity Period immediately prior to the date on which the Firm ceased to practise, either paragraph 2.7.1 or 2.7.2 applies,
- the arrangements referred to in paragraph 2.8 shall apply.
- 2.8 The ARP Manager shall (and is hereby authorised to) agree on behalf of all Qualifying Insurers arrangements with the Law Society for the purpose of providing professional indemnity insurance in respect of Firms which do not obtain a policy as required under the Rules. These arrangements shall include provisions to ensure that:
- 2.8.1 insurance through one or more policies issued by the ARP Manager on behalf of all Qualifying Insurers is provided in respect of such Firms;
- 2.8.2 such insurance is in compliance with the Minimum Terms, subject to any variation that the ARP Manager and the Law Society may agree; and
- 2.8.3 premiums and other sums due under the terms of each such policy are recoverable from the relevant Firm.

### 3 Basis of participation in the ARP

- 3.1 The Insurer shall provide to the ARP Manager within 10 business days following the start of each Indemnity Period a declaration in the form set out in Part 1 of Schedule 4, providing a figure for the Relevant Premium Income of the Insurer on a best estimate basis.
- 3.2 In the event that the Insurer fails to provide a figure within the time limit in accordance with paragraph 3.1, the ARP Manager may in its absolute discretion make its own estimate of the relevant figure for the purposes of this paragraph 3.
- 3.3 The ARP Manager shall calculate in accordance with paragraph 3.7 the Initial Participation of the Insurer on the basis of the information provided in accordance with paragraph 3.1 or estimated in accordance with paragraph 3.2 and shall notify each Qualifying Insurer of its Initial Participation by no later than 20 business days after the start of the relevant Indemnity Period.
- 3.4 The Insurer shall provide a declaration of its Relevant Premium Income to the ARP Manager by no later than 28 February in each Indemnity Period in the form set out in Part 2 of Schedule 4, for the purpose of determining its Percentage Participation in the ARP for that Indemnity Period.
- 3.5 The ARP Manager shall calculate in accordance with paragraph 3.7 the Percentage Participation of the Insurer on the basis of the information provided in accordance with paragraph 3.4 and shall notify:
- 3.5.1 each Qualifying Insurer of its Percentage Participation; and
- 3.5.2 each ARP Firm of the Percentage Participations of each of the Qualifying Insurers to the extent that they exceed 0 per cent
- by no later than 10 business days following the date in the relevant Indemnity Period on which the ARP Manager receives the last of the declarations required under paragraph 3.4 (the **Notification Date**) from any Qualifying Insurer.
- 3.6 The Percentage Participation notified on the Notification Date shall be applicable in respect of all ARP Policies incepting in the relevant Indemnity Period and under any arrangements made pursuant to paragraph 2.7 in respect of that period both up to that date and thereafter, except to the extent that it may be adjusted from time to time in accordance with paragraph 9.
- 3.7 Each calculation made under this paragraph 3 shall be made in accordance with the formula:

$$\frac{A}{B} \times 100, \text{ where}$$

A = the Relevant Premium Income as declared by the Insurer in accordance with paragraph 3.1 or 3.4 or as estimated by the ARP Manager in accordance with paragraph 3.2 (as the case may require);

B = the total Relevant Premium Income declared by all Qualifying Insurers for that Indemnity Period;

**Relevant Premium Income** means the Premium Payable to a Qualifying Insurer in respect of Policies (excluding ARP Policies) incepting in the period 1 October 2011 to 31 January 2012, to the extent that such premium relates to cover required in accordance with the Minimum Terms for that Indemnity Period, as calculated in accordance with generally recognised professional indemnity underwriting methodologies; and

**Premium Payable** means the premium due from each Firm to a Qualifying Insurer (excluding any amount in respect of Insurance Premium Tax), whether or not actually received by that Insurer, less (only) any amount due to any intermediary acting as agent of that Firm for the purpose of obtaining professional indemnity insurance.

Provided that the ARP Manager may, at its absolute discretion, round the percentage resulting from the above formula, up or down to not less than three decimal points.

- 3.8 Without prejudice to paragraph 9.4 the Insurer warrants and represents to the ARP Manager for itself (and as trustee for all Qualifying Insurers participating in the ARP in any relevant Indemnity Period) that:
- 3.8.1 the estimated Relevant Premium Income declared pursuant to paragraph 3.1 is its best estimate of its Relevant Premium Income for the relevant Indemnity Period; and
- 3.8.2 to the best of the knowledge information and belief of the Insurer the Relevant Premium Income declared pursuant to paragraph 3.4 does not materially understate the Relevant Premium Income for the relevant Indemnity Period as at the date of such declaration; and
- 3.8.3 it has taken all reasonable steps to verify the accuracy of the declarations of its Relevant Premium Income made pursuant to paragraphs 3.1 and 3.4 and that such declarations have been made in good faith.
- 3.9 In the event that the ARP Manager can establish that the Insurer is in breach of the provisions of paragraph 3.8 and that in consequence the Percentage Liability of the Insurer has been materially understated (that is to say understated by more than 0.1 per cent) then the Percentage Liability of the Insurer (but not the Percentage Participation) shall be adjusted to the level it would have been, but for any such breach, and the Percentage Liability of all other Qualifying Insurers shall be adjusted accordingly.

#### **4 Quarterly reporting**

- 4.1 The ARP Manager shall at intervals of not less than 3 months following the Notification Date in respect of each Indemnity Period provide a bordereau to each insurer participating in the ARP in that Indemnity Period setting out premiums received and claims made or notified in respect of that Indemnity Period, and the administration and management costs and expenses incurred by the ARP Manager relating to that Indemnity Period.
- 4.2 The obligation of the ARP Manager under paragraph 4.1 shall continue until 3 months after the end of the Indemnity Period in question or, if later, for so long as any claims made on ARP Policies incepting in that Indemnity Period or under any arrangements made pursuant to paragraph 2.7 in respect of that period remain outstanding.

#### **5 Share of premium**

- 5.1 The Insurer shall be entitled to share in all premiums received by the ARP Manager in respect of all ARP Policies incepting in the relevant Indemnity Period or under any arrangements made pursuant to paragraph 2.8 in respect of that period in accordance with its Percentage Participation from time to time, subject to:
- 5.1.1 deduction of administration and management charges (including any applicable Value Added Tax) by the ARP Manager;
- 5.1.2 (where the Insurer has agreed that these may be paid on its behalf by the ARP Manager under paragraph 2.3.5 or where the obligation to pay such amounts falls on the ARP Manager as a matter of law) deduction of any amounts payable by the ARP Manager to HM Revenue and Customs by way of Insurance Premium Tax;
- 5.1.3 any set-off against the liability of the Insurer from time to time under paragraph 6;
- 5.1.4 any set-off against the liability of the Insurer from time to time in respect of claims arising on ARP Policies or in respect of any arrangements made pursuant to paragraph 2.8 incepting in any previous Indemnity Period;
- 5.1.5 any adjustment required under paragraph 6.5;

- 5.1.6 any adjustment to the Insurer's Percentage Liability in accordance with paragraph 3.9;
- 5.1.7 any adjustment to the Insurer's Initial Participation Percentage Participation or Percentage Liability in accordance with paragraph 9;
- 5.1.8 the addition of any income earned (net of any taxation in respect of that income) on premiums received by the ARP Manager; and
- 5.1.9 deduction of any sum due pursuant to paragraph 8.1,

such share after taking into account each of the above adjustments being referred to in this Agreement as the **ARP Amount**.

- 5.2 If, on the date 3 months following the end of the relevant Indemnity Period, the ARP Amount in respect of any Indemnity Period is greater than zero, the ARP Manager shall pay such sum to the Insurer within 20 business days thereafter, but without prejudice to its rights under to make any subsequent demands under paragraph 6.
- 5.3 The ARP Manager shall keep all premiums received in respect of ARP Policies or under any arrangements made pursuant to paragraph 2.8 in a separate account in relation to each Indemnity Period and held by the ARP Manager on trust for the Qualifying Insurers which participate in the ARP at any time during the relevant Indemnity Period.
- 5.4 The ARP Manager shall execute a Deed of Trust in the form attached to this Schedule 1, setting out the terms on which it shall hold sums as agent and trustee of each Qualifying Insurer

## **6 Share of liability**

- 6.1 The Insurer shall be liable to make payments under each ARP Policy incepting in the relevant Indemnity Period or under any arrangements made pursuant to paragraph 2.8 in accordance with its Percentage Liability.
- 6.2 The Percentage Liability of the Insurer in respect of each ARP Policy or under any arrangements made pursuant to paragraph 2.8 shall (subject to paragraphs 3.9 or 9.4) equal its Percentage Participation applicable on the date on which that ARP Policy or any such arrangements incepted.
- 6.3 The ARP Manager may at any time and from time to time demand from the Insurer an amount as specified by the ARP Manager for the purpose of making payments on behalf of the Insurer in accordance with its Percentage Liability.
- 6.4 The ARP Manager may at any time and from time to time demand from the Insurer an amount as specified by the ARP Manager for the purpose of meeting the administration and management costs and expenses (including any applicable Value Added Tax) of the ARP Manager, including without limitation in respect of all costs and expenses howsoever incurred (including where applicable, but without limitation, the amount of any claim paid and associated claimant's costs) in respect of any claim handled by the ARP Manager in accordance with clause 12.1.2, provided that in each case any such demand is made at the same time from all Qualifying Insurers participating in the ARP at the date of the demand in accordance with the Percentage Liability of each such Insurer on the date of the demand.
- 6.5 If any demand under this paragraph 6 is made before the Notification Date in any Indemnity Period before the relevant Percentage Participation (or, as the case may be, the relevant Percentage Liability) of the Insurer has been determined, then any such demand may be made in accordance with the Initial Participation of the Insurer, provided that the ARP Manager shall make any adjustment necessary to the ARP Amount in respect of the Insurer to reflect any difference between the Insurer's Initial Participation and the Insurer's relevant Percentage Participation (or, as the case may be, the relevant Percentage Liability) within one month of the Notification Date.
- 6.6 The ARP Manager shall not make any demand from the Insurer under this paragraph 6 where:
  - 6.6.1 the Insurer has paid the ARP Manager in full following all previous such demands; and

- 6.6.2 the ARP Manager holds sufficient premiums on trust for the Insurer from which to pay known and anticipated claims and defence costs and/or meet any administration and management costs and expenses (including any applicable Value Added Tax).
- 6.7 The Insurer shall pay to the ARP Manager all sums demanded by the ARP Manager under this paragraph 6 within 10 business days of such demand being made by the ARP Manager. If the Insurer fails to make payment to the ARP Manager in full within such period, the ARP Manager shall be further entitled to recover from the Insurer a sum equal to all reasonable additional costs and expenses incurred by it in pursuing such payment. Interest shall accrue at a rate equal to the base rate from time to time of Barclays Bank plc plus three per cent to any sums that remain unpaid within 10 business days of such demand being made by the ARP Manager, and any sums representing reasonable additional costs and expenses.
- 6.8 The ARP Manager shall, on request in writing from the Insurer, provide evidence of its administration and management costs and expenses where any sum in respect of such costs and expenses has been demanded under paragraph 6.4.

## **7 ARP Indemnity Period**

- 7.1 Each ARP Policy issued and any arrangements made pursuant to paragraph 2.8 by the ARP Manager on behalf of the Qualifying Insurers shall expire at the end of an Indemnity Period, irrespective of the date on which the ARP Policy is written or incepted or any such arrangements are made or incepted.
- 7.2 The ARP Manager may not issue an ARP Policy or effect any arrangements pursuant to paragraph 2.8 with an expiry date before the end of the Indemnity Period in which that ARP Policy incepted or in relation to which those arrangements are made.
- 7.3 Paragraphs 7.1 and 7.2 shall apply in respect of an ARP Policy subject to the eligibility under the Rules of the ARP Firm in question to remain in the ARP until the end of the Indemnity Period, and an ARP Policy shall expire upon the ARP Firm holding such Policy ceasing to be entitled under the Rules to be insured through the ARP.

## **8 Additional charges**

- 8.1 The ARP Manager shall pay on behalf of Qualifying Insurers the costs and expenses of the Law Society in respect of any special measures as notified to it by the Law Society imposed on an ARP Firm. The ARP Manager shall be entitled to seek reimbursement of any such costs and expenses from the relevant ARP Firm.

## **9 Adjustments to Percentage Participation and Percentage Liability**

- 9.1 If any Qualifying Insurer becomes a Run-off Insurer during any Indemnity Period (but not thereafter) then:
- 9.1.1 the Percentage Participation of each of the other Qualifying Insurers in respect of the unexpired part of the relevant Indemnity Period shall be recalculated in accordance with the formula set out in paragraph 3.7 but excluding the Relevant Premium Income of the Run-off Insurer in question; and
- 9.1.2 the Percentage Participation of the Run-off Insurer in question in respect of the unexpired part of the relevant Indemnity Period shall equal zero.
- 9.2 The Percentage Participation adjusted under paragraph 9.1 shall apply from the date on which the Run-off Insurer in question became a Run-off Insurer.
- 9.3 If at any time after the start of any Indemnity Period any Qualifying Insurer or Run-off Insurer which is or was a participant in the ARP during that Indemnity Period is the subject of an Insolvency Event, the Percentage Liability of the Qualifying Insurer or Run-off Insurer in question and each other Qualifying Insurer shall remain the same as it was immediately prior to the Insolvency Event.

9.4 Without prejudice to paragraph 3.9 the ARP Manager may, in its absolute discretion, at any time during or after the end of any Indemnity Period adjust the Initial Participation, the Percentage Participation and/or the Percentage Liability of each Qualifying Insurer prospectively or retrospectively in the light of information relating to the Relevant Premium Income of one or more Qualifying Insurers obtained or received by the ARP Manager which indicates that the Relevant Premium Income of such Qualifying Insurers is greater than that previously declared to the ARP Manager.

9.5 The ARP Manager shall notify in writing:

9.5.1 each Qualifying Insurer of its revised Percentage Participation; and

9.5.2 each ARP Firm of the revised Percentage Participations of each of the Qualifying Insurers,

by no later than 10 business days following any adjustment being made in accordance with any of the provisions of this paragraph 9.

## **10 Supplementary provisions**

10.1 Clauses 6, 7, 9, 10, 12, 13, 14, 15 and 16 shall apply to the ARP Manager in respect of its dealings with ARP Firms, Qualifying Insurers and the Law Society in the same way as they apply to Qualifying Insurers, except that the ARP Manager shall be obliged to notify the Law Society in the circumstances described in clause 6.2.

10.2 The Insurer undertakes and agrees with the ARP Manager and the Law Society that it shall:

10.2.1 if called upon to do so, ratify and confirm any lawful and reasonable act or omission of the ARP Manager, its employees and agents on behalf of the Insurer and/or all Qualifying Insurers in carrying out the duties of the ARP Manager under this Agreement; and

10.2.2 indemnify the ARP Manager and keep it indemnified fully at all times against all liabilities, claims, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by the ARP Manager in the proper performance by the ARP Manager of its duties under this Agreement.

10.3 The ARP Manager (and its agents and advisors from time to time) shall be entitled to access any Records of the Insurer at all times on reasonable notice during normal business hours for the purpose of verifying or obtaining any information provided or required to be provided by the Insurer to the ARP Manager.

Private & Confidential

**Dated** \_\_\_\_\_

**Capita Commercial Insurance Services Limited (1)**  
in its capacity as Assigned Risks Pool Manager

and

**The Law Society of England and Wales (2)**

**Trust Deed**

**Indemnity Period 2011 to 2012**

 **NORTON ROSE**



**THIS DECLARATION OF TRUST** is made on .....2011 between:

- (1) **CAPITA COMMERCIAL INSURANCE SERVICES LIMITED** (a company registered in England and Wales under number 02845397), whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent, BR3 4TV (the **Trustee**); and
- (2) **THE LAW SOCIETY OF ENGLAND AND WALES**, as established by a Royal Charter in 1845 and currently located at 113 Chancery Lane, London WC2A 1PL (the **Society**).

## **WHEREAS**

- (A) The Council of the Society has, in exercise of its powers under the Solicitors Act 1974, made rules concerning indemnity against civil liability incurred by, amongst others, solicitors in private practice in England and Wales.
- (B) These rules require firms and sole practitioners in private practice to take out professional indemnity insurance on at least the minimum terms and conditions with an authorised insurer which has entered into a Qualifying Insurer's Agreement with the Society.
- (C) The Rules and the Qualifying Insurer's Agreement provide for an assigned risks pool to be managed by an assigned risks pool manager.
- (D) The Society has appointed the Trustee to perform the obligations of assigned risks pool manager as agent for each Qualifying Insurer and in accordance with the requirements of the Rules and the Qualifying Insurer's Agreement.
- (E) The purpose of this Deed is to set out the terms on which the Trustee, as Assigned Risks Pool Manager, will hold monies as agent and trustee of the Beneficiaries.

## **1 Definitions and interpretation**

1.1 In this Deed, unless the context requires otherwise:

**ARP Monies** means all sums held by the Trustee in accordance with the Assigned Risks Pool Management Agreement and the Qualifying Insurer's Agreement in relation to the establishment and operation of the Assigned Risks Pool, including interest accrued on such sums

**Assigned Risks Pool** means the arrangements described in schedule 2 to the Qualifying Insurer's Agreement and in the Rules, in relation to the Indemnity Period

**Assigned Risks Pool Management Agreement** means the agreement entered into between the Trustee (as assigned risks pool manager) and the Society relating to the establishment and operation of the Assigned Risks Pool, as amended from time to time

**Beneficiaries** means those Qualifying Insurers participating in the Assigned Risks Pool for all or part of the Indemnity Period, as shown for ease of identification in Annex 1

**Indemnity Period** means the period from 1 October 2011 to 30 September 2012

**Qualifying Insurer's Agreement** means the agreement entered into by each of the Beneficiaries and (in each case) the Trustee and the Society in relation to the Indemnity Period

**Percentage Participations** has the meaning given in the Qualifying Insurer's Agreement, and in relation to each Beneficiary means that amount, expressed as a percentage, set out for ease of identification alongside the name of each Beneficiary in Annex 1, or as they may be varied from time to time in accordance with the Qualifying Insurer's Agreement

**Rules** means the Solicitors' Indemnity Insurance Rules or SRA Indemnity Insurance Rules in respect of the Indemnity Period.

- 1.2 In this Deed, unless the context requires otherwise:
- 1.2.1 references to a clause or annex are to a clause of, or an annex to, this Deed, and references to this Deed include its annex(es);
- 1.2.2 references to this Deed or any other document or to any specified provision of this Deed or any other document are to this Deed, that document or that provision as in force for the time being and as amended from time to time;
- 1.2.3 the singular includes the plural and *vice versa*, words importing a gender include every gender and references to persons include bodies corporate, partnerships and other unincorporated associations or bodies of persons;
- 1.2.4 the contents table and the headings to clauses and schedules are inserted for reference only and shall be ignored in interpreting this Deed;
- 1.2.5 a reference to any statute, statutory provision, code or regulation includes:
- (a) any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made under it; and
  - (b) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it, either before or at the date of this Deed, or after the date of this Deed.

## **2 Declaration of trust**

- 2.1 The Trustee declares that it holds the ARP Monies upon trust for the Beneficiaries and their respective successors in title in proportion to their Percentage Participations.
- 2.2 The Trustee shall pay and deal with the ARP Monies in accordance with the terms of the ARP Management Agreement, the Qualifying Insurer's Agreement and the provisions of this Deed, including, without limitation, paying and receiving such sums on behalf of each Beneficiary as are contemplated in Schedule 2 to the Qualifying Insurer's Agreement and, subject thereto, as each Beneficiary from time to time directs.
- 2.3 The Trustee may, with the prior consent in writing of the Society, terminate the trust established by this Deed at any time upon reasonable notice to each Beneficiary, but without prejudice to the rights and obligations of the Trustee and each of the Beneficiaries arising prior to the date of termination. As between the Trustee and the relevant Beneficiary, the trust established by this Deed shall terminate upon the Trustee paying such sum (if any) as it may at that time hold on behalf of any Beneficiary in full and final settlement of that Beneficiary's obligations under the Qualifying Insurer's Agreement in respect of the Assigned Risks Pool.
- 2.4 The obligations of the Trustee set out in this Deed are additional to and not in substitution for its obligations under the Assigned Risks Pool Management Agreement and the Qualifying Insurer's Agreement, and references in the Qualifying Insurer's Agreement to the duties of the Assigned Risks Pool Manager shall be read as including the duties of the Trustee under this Deed.
- 2.5 The Trustee shall complete the details of each Beneficiary in Annex 1 upon that information becoming available to it in accordance with the Qualifying Insurer's Agreement, but any omission or inaccuracy in Annex 1 shall in no way prejudice the rights of any Qualifying Insurer or alter the obligations of the Trustee in relation to that Qualifying Insurer, and the Trustee shall not be obliged to update the details in Annex 1 if they change for whatever reason.

### **3 Holding of ARP Monies**

- 3.1 The Trustee shall hold the ARP Monies in a separate designated bank account, in the name of "Capita Commercial Insurance Services Limited as trustee for underwriters subscribing to the Assigned Risks Pool for the 2011/2012 Indemnity Period", held with Barclays Bank plc, PO Box 544, 54 Lombard Street, London EC3V 9EX, Sort Code 20-00-00, or at such other UK branch of any bank authorised to carry on business in the UK as the Trustee may determine from time to time.
- 3.2 The ARP Monies shall not be mixed or commingled with any other monies, including without limitation monies relating to the assigned risks pool for any other indemnity period.
- 3.3 The Trustee shall notify the Beneficiaries in writing of the details of the account referred to in clause 3.1 and of any material change to the account in which the ARP Monies are held.
- 3.4 The Trustee shall comply with all regulatory requirements in respect of the holding of the ARP Monies, including without limitation all regulatory requirements imposed by the Financial Services Authority.

### **4 Appointment of new trustees**

- 4.1 The Trustee may, with the prior consent in writing of the Society and on reasonable notice to the Beneficiaries, appoint another person or persons to act as trustee jointly in addition to or in substitution for the Trustee in accordance with the terms of this Deed.
- 4.2 The Society may, on reasonable notice to Trustee, terminate the appointment of the Trustee as trustee under this Deed, including without limitation if it terminates the appointment of the Trustee as manager of the Assigned Risks Pool, and may appoint another person or persons to act as trustee in addition to or in substitution for the Trustee in accordance with the terms of this Deed. The Society shall procure that any replacement trustee promptly gives notice of its appointment as such to the Beneficiaries.
- 4.3 On the happening of any of the events contemplated in clauses 4.1 and 4.2, the Trustee or (as the case may be) the Society may transfer all or part of the ARP Monies to another person or persons to act as trustee, provided that each such other person has agreed to hold such monies on terms substantially the same as those set out in this Deed and in particular on trust for the Beneficiaries.

### **5 Other provisions**

- 5.1 This Deed (together with any documents referred to in it) sets out the entire agreement and understanding in connection with the matters described in it.
- 5.2 Any Beneficiary may enforce the terms of this Deed as if it were a party hereto, in accordance with the Contracts (Rights of Third Parties) Act 1999, but no third party shall otherwise have any rights under or in connection with this Deed by virtue of that Act or otherwise.
- 5.3 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**IN WITNESS** of which this document has been executed as a Deed and delivered on the date first above written.

**EXECUTED** as a **DEED** and delivered )  
by **THE TRUSTEE** )

.....  
Director

.....  
Director / Secretary

**EXECUTED** as a **DEED** and delivered )  
by **THE LAW SOCIETY** )

.....  
.....

**Annex 1**  
**List of Beneficiaries**

*[List relevant Qualifying Insurers and their Percentage Participations for the Indemnity Period in question]*

Beneficiary	Percentage Participation
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## **Schedule 2 The ARP Policy**

### **Part 1**

#### **Contract of Assigned Risks Pool insurance**

##### **1 Insuring clauses**

###### **1.1 Civil liability**

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with the Insured Firm's Practice, provided that a Claim in respect of such liability:

- (a) is first made against an Insured during the Period of Insurance; or
- (b) is made against an Insured during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

###### **1.2 Defence Costs**

The Insurer will also indemnify the Insured against Defence Costs in relation to:

- (a) any Claim referred to in clause 1.1, 1.4 or 1.6; or
- (b) any Circumstances first notified to the Insurer during the Period of Insurance; or
- (c) any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of The Law Society of England and Wales (including, without limitation, the Solicitors Regulation Authority and the Solicitors Disciplinary Tribunal)) during or after the Period of Insurance arising from any Claim referred to in clause 1.1, 1.4 or 1.6 or from Circumstances first notified to the Insurer during the Period of Insurance.

###### **1.3 The Insured**

For the purposes of cover under clause 1.1, the Insured includes:

- (a) the Insured Firm; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Insured Firm, and/or the Principals of the Insured Firm; and
- (c) each Principal, each former Principal and each person who becomes a Principal during the Period of Insurance of the Insured Firm or a company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Insured Firm or a company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated person referred to in paragraph (c) or (d).

###### **1.4 Prior Practice**

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Prior Practice, provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

#### **1.5 The Insured - Prior Practice**

For the purposes of cover under clause 1.4, the Insured includes:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal and former Principal of each Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee and former Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

#### **1.6 Successor Practice**

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Successor Practice to the Insured Firm's Practice (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

#### **1.7 The Insured - Successor Practice**

For the purposes of cover under clause 1.6, the Insured includes:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice during the Period of Insurance; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal, each former Principal and each person who becomes during the Period of Insurance a Principal of any Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## **1.8 Award by regulatory authority**

The Insurer will indemnify each Insured against any amount paid or payable in accordance with the recommendation or determination of the Legal Services Ombudsman, the Office for Legal Complaints (including the Legal Ombudsman pursuant to section 137(2)(c) and section 137(4)(b) of the Legal Services Act 2007) or any other regulatory authority to the same extent as it indemnifies the Insured against civil liability provided that the Insurer will have no liability in respect of any determination by the Legal Ombudsman pursuant to section 137(2)(b) of the Legal Services Act 2007 to refund any fees paid to the Insured.

## **2 Limit of insurance cover**

### **2.1 Any one Claim**

The Sum Insured for any one Claim (exclusive of Defence Costs) is as set out in the Schedule.

### **2.2 No limit on Defence Costs**

The Sum Insured does not apply to Defence Costs.

### **2.3 Proportionate limit on Defence Costs**

Notwithstanding clause 2.2, liability for Defence Costs in relation to a Claim which exceeds the Sum Insured is limited to the proportion that the Sum Insured bears to the total amount paid or payable to dispose of the Claim.

### **2.4 One Claim**

When considering what may be regarded as one Claim for the purposes of the limits contemplated by clauses 2.1 and 2.3:

(a) all Claims against any one or more Insured arising from:

- (i) one act or omission;
- (ii) one series of related acts or omissions;
- (iii) the same act or omission in a series of related matters or transactions;
- (iv) similar acts or omissions in a series of related matters or transactions

and

(b) all Claims against one or more Insured arising from one matter or transaction

will be regarded as one Claim.

### **2.5 Multiple underwriters**

Where the insurance is underwritten jointly with any other insurer:

- (a) the Insurer shall be severally liable only for its respective proportion of liability as set out in the Schedule; and
- (b) in addition to the proportionate limit on Defence Costs in accordance with clause 2.3, the Insurer's liability for Defence Costs shall be further limited to the extent or proportion of the Insurer's liability (if any) in relation to the relevant Claim.

Where the insurance is written jointly with any other insurer on an excess of loss basis, and the Insurer is writing one of the excess layers, the provisions of Part 3 shall apply.



### **3 Excesses**

#### **3.1 The Excess**

The Insured will bear the first amount of each and every Claim up to the amount of the Excess specified in the Schedule.

#### **3.2 Excess does not reduce Sum Insured**

The Excess does not reduce the Sum Insured.

#### **3.3 Excess does not apply to Defence Costs**

The Excess does not apply to Defence Costs.

#### **3.4 Funding of the Excess**

If an Insured fails to pay to a Claimant any amount which is within the Excess within 30 days of it becoming due for payment, the Claimant may give notice of the Insured's default to the Insurer, whereupon the Insurer is liable to remedy the default on the Insured's behalf. Any amount paid by the Insurer to remedy such a default erodes the Sum Insured.

#### **3.5 One Claim**

All Claims against any one or more Insured arising from the same act or omission or from one series of related acts or omissions will be regarded as one Claim for the purposes of the Excess.

### **4 Special conditions**

#### **4.1 No avoidance or repudiation**

The Insurer is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

#### **4.2 No adjustment or denial**

The Insurer is not entitled to reduce or deny its liability under this contract on any grounds whatsoever including, without limitation, any breach of any term or condition of this contract, except to the extent that one of the exclusions contained in clause 6 applies.

#### **4.3 No cancellation**

This contract cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the Insured Firm and the Insurer, and in any event only in circumstances where:

- (a) the Insured Firm's Practice is merged into a Successor Practice, provided that there is insurance complying with the Minimum Terms and Conditions in relation to that Successor Practice, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance complying with the Minimum Terms and Conditions commences, but only where, in the case of insurance not provided wholly or partly by the Assigned Risks Pool, the replacement insurance is not provided wholly or partly by the Assigned Risks Pool, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the Insured Firm is not required under the SRA Indemnity Insurance Rules 2011 to effect a policy of Qualifying Insurance, in which case cancellation shall have effect from the later of (a) the start of the relevant Indemnity Period and (b) the date on which the Insured Firm ceased to be required to effect a policy of Qualifying Insurance, or such later date as the Insured Firm and the Insurer may agree; or

- (d) it subsequently transpires that the Insured Firm was not or has ceased to be an Eligible Firm, in which case cancellation shall have effect from the date on which it ceased to be an Eligible Firm.

Cancellation will not affect the rights and obligations of the Insurer and the Insured accrued under this contract prior to the date from which cancellation has effect.

#### **4.4 No set-off**

Any amount payable by the Insurer to indemnify an Insured against civil liability to a Claimant will be paid only to the Claimant, or at the Claimant's direction, and the Insurer is not entitled to set-off against any such amount any payment due to it by any Insured including, without limitation, any payment of premium or to reimburse the Insurer.

#### **4.5 Other insurance**

The liability of the Insurer under this contract is not reduced or excluded by reason of the existence or availability of any other insurance except as provided by clause 6.2. This clause does not affect any right of the Insurer to claim contribution from any other insurer which is also liable to indemnify any Insured.

#### **4.6 Successor Practice - 'double insurance'**

If the Insured Firm's Practice is succeeded during the Period of Insurance and, as a result, a situation of 'double insurance' exists between two or more insurers of the Successor Practice, contribution between insurers is to be determined in accordance with the relative numbers of Principals of the owners of the constituent Practices immediately prior to succession.

#### **4.7 Advancement of Defence Costs**

The Insurer will meet Defence Costs as and when they are incurred, including Defence Costs incurred on behalf of an Insured who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the Insurer is not liable for Defence Costs incurred on behalf of that Insured after the earlier of:

- (a) that Insured admitting to the Insurer the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that Insured was in fact guilty of such dishonesty, act or omission.

#### **4.8 Resolution of disputes**

If there is a dispute as to whether a Practice is a Successor Practice for the purposes of clauses 1.4, 1.6 or 5.3, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with the Minimum Terms and Conditions and that party's insurer.

#### **4.9 Conduct of a Claim pending dispute resolution**

Pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the Society, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim. If the Society is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the Insurer; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### **4.10 Minimum Terms and Conditions prevail**

This contract is to be construed or rectified so as to comply with the requirements of the Minimum Terms and Conditions, and any provision of this contract which is inconsistent with the Minimum Terms and Conditions is to be severed or rectified to comply.

### **5 Run-off cover**

#### **5.1 Cessation of the Insured Firm's Practice**

In the event of a Cessation, this contract provides run-off cover in accordance with clause 5.2. For these purposes, the Insured Firm's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured Firm becomes a Non-SRA Firm.

#### **5.2 Scope of run-off cover**

If run-off cover is provided under clause 5.1, the Insurer will indemnify each Insured in accordance with clauses 1.1 to 1.8 (but subject to the limits, exclusions and conditions of this contract) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended).

#### **5.3 Succession**

Run-off cover is not provided under clause 5.1 if there is a Successor Practice to the ceased Practice, provided that there is insurance complying with the Minimum Terms and Conditions in relation to that Successor Practice.

#### **5.4 Suspended Practices**

Where run-off cover has been activated in accordance with this clause 5, but where the Insured Firm's Practice restarts, the Insurer may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these minimum terms and conditions in relation to the Insured Firm in force on the date of cancellation;
- (b) the Qualifying Insurer providing such insurance confirms in writing to the Insured Firm and the Insurer (if different) that:
  - (i) it is providing insurance complying with these minimum terms and conditions in relation to that Insured Firm for the then current Indemnity Period; and
  - (ii) it is doing so on the basis that the Insured Firm's Practice is regarded as being a continuation of the Insured Firm's Practice prior to Cessation and that accordingly it is liable for Claims against the Insured Firm arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to Cessation.

### **6 Exclusions**

The liability of the Insurer under this contract is not excluded or limited except to the extent that any Claim or related Defence Costs arise from the matters set out in this clause 6.

#### **6.1 Prior cover**

Any Claim in respect of which the Insured is entitled to be indemnified by the Solicitors Indemnity Fund (**SIF**) or under a professional indemnity insurance contract for a period earlier than the Period of Insurance, whether by reason of notification of Circumstances to SIF or under the earlier contract or otherwise.

## **6.2 Death or bodily injury**

Any liability of any Insured for causing or contributing to death or bodily injury, except that this contract nonetheless covers liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

## **6.3 Property damage**

Any liability of any Insured for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any Insured in connection with the Insured Firm's Practice and not occupied or used in the course of the Insured Firm's Practice), except that this contract nonetheless covers liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

## **6.4 Partnership disputes**

Any actual or alleged breach of the Insured Firm's Partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the Insured Firm is a Limited Liability Partnership or a company without a share capital.

## **6.5 Employment breaches, discrimination, etc.**

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any Partnership or shareholder agreement or arrangement or the equivalent where the Insured Firm is a Limited Liability Partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

## **6.6 Debts and trading liabilities**

Any:

- (a) trading or personal debt of any Insured; or
- (b) legal liability assumed or accepted by an Insured or an Insured Firm under any contract or agreement for the supply to, or use by, the Insured or Insured Firm of goods or services in the course of the Insured Firm's Practice, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an Insured Firm's Practice in connection with its or any Insured's use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the Insured Firm; or
- (c) guarantee, indemnity or undertaking by any particular Insured in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that Insured.

## **6.7 Fines, penalties, etc**

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any Insured.

## **6.8 Fraud or dishonesty**

The Insurer is not liable to indemnify any Insured to the extent that any civil liability or related Defence Costs arise from dishonesty or a fraudulent act or omission committed or condoned by that Insured, except that:

- (a) this contract nonetheless covers each other Insured; and
- (b) no such dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership.

## **6.9 Directors' or officers' liability**

The Insurer is not liable to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a Recognised Body or a service, administration, trustee or nominee company referred to in clause 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) this contract nonetheless covers any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) this contract nonetheless covers each other Insured against any vicarious or joint liability.

## **6.10 War and Terrorism, and Asbestos**

- (a) Subject to 6.10(b) below, but otherwise notwithstanding any provision to the contrary within this insurance or any endorsement hereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
  - (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (ii) any act of terrorism; or
  - (iii) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos.

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i), (ii) and/or (iii) above.

If the Insurer alleges that by reason of this clause, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- (b) Clause 6.10(a) above does not exclude or limit any liability of the Insurer to indemnify any Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge

or fulfil any duty incidental to the Insured Firm's Practice or to the conduct of Private Legal Practice.

## **7 General conditions**

### **7.1 Notice of claims and circumstances**

The Insured will give notice in writing to the Insurer as soon as is reasonably practicable of any:

- (a) Claim first made against Insured during the Period of Insurance; or
- (b) Circumstances of which any Insured first became aware during the Period of Insurance.

### **7.2 Co-operation and assistance**

Each Insured will give the Insurer and any investigators or solicitors appointed by the Insurer all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible Claim or any related proceeding.

### **7.3 Conduct of any proceeding**

The Insurer may at its option take over and conduct in the name of any Insured any proceeding arising out of or relating to any Claim in respect of which the Insurer is liable to indemnify any Insured under this contract.

### **7.4 No admission of liability**

The Insured will not, without the prior consent in writing of the Insurer, admit liability for or settle any Claim in respect of which the Insurer is liable to indemnify any Insured under this contract. If the Insured Firm wishes a claim to be settled, but the Insurer does not, the Insurer will brief senior counsel (to be mutually selected or, in default of agreement, to be selected by the Society) to advise on whether or not the Claim against the Insured is likely to succeed. If counsel's advice is that the Claim is likely to succeed, the Insurer shall take such steps as are mutually agreed to settle the Claim on terms to be mutually agreed or, in default of agreement, such steps and such terms as counsel advises having due regard to the interests of both the Insured and the Insurer. Counsel's fee will in each case be payable by the party against whose contention counsel advised.

### **7.5 Subrogation**

If any payment is made by the Insurer in respect of a Claim against any Insured, the Insurer will be subrogated to all rights of the Insured of indemnity, contribution or recovery to the extent of that payment. The Insured will not surrender any such right, or settle any such claim for indemnity, contribution or recovery, without the prior consent in writing of the Insurer.

### **7.6 Reimbursement**

Each Insured who:

- (a) committed; or
- (b) condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of this contract; or
  - (iii) dishonesty or any fraudulent act or omission

will reimburse the Insurer to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation, breach, dishonesty,

act or omission, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of this contract was in order to comply with any applicable rules or codes laid down from time to time by the Society, or in the Society publication *Your Clients - Your Business*, as amended from time to time.

No non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership. Any right of reimbursement under this clause against any person referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such person if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

#### **7.7 Reimbursement of Defence Costs**

Each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf which the Insurer is not ultimately liable to pay.

#### **7.8 Reimbursement of the Excess**

Those persons who are at any time during the Period of Insurance Principals of the Insured Firm (including, for these purposes, every person held out as a partner of a Sole Practitioner) will reimburse the Insurer for any Excess paid by the Insurer on an Insured's behalf. The Sum Insured is reinstated to the extent of reimbursement of any amount which eroded it under clause 3.4.

#### **7.9 Reimbursement of moneys paid pending dispute resolution**

Each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf which, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

#### **7.10 Withholding assets or entitlements**

The Insured Firm will account to the Insurer for any asset or entitlement of any person who committed or condoned any dishonesty or fraudulent act or omission, provided that the Insured Firm is legally entitled to withhold that asset or entitlement from that person.

#### **7.11 Disclosure of information**

The Insurer may bring to the attention of the Society any of the matters referred to in Rule 17.1 (a) to (f) of the SRA Indemnity Insurance Rules 2011, and, in the case of any of the matters referred to in Rule 17.1 (f), to the Office for Legal Complaints (including the Legal Ombudsman), in relation to the Insured Firm or any Insured, and is not required to notify the Insured Firm or any Insured of the fact that it has done so or intends to do so.

### **8 Definitions**

#### **8.1 General**

In this contract unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa; and
- (b) the male gender includes the female and neuter genders; and
- (c) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons; and
- (d) a reference to any statute, statutory provision, code or regulation includes:

- (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
- (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the date of this contract; and
- (e) references to the Society include the Solicitors Regulation Authority and any body or person which succeeds in whole or in part to the functions of the Society or the Solicitors Regulation Authority and any delegate of the Society, the Solicitors Regulation Authority or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of this contract; and
- (g) a reference to a director includes a member of a Limited Liability Partnership; and
- (h) words and expressions which begin with a capital letter this contract have the meaning set out in this clause 8; and
- (i) words and expressions in this contract are to be construed consistently with the same or similar words or expressions in the SRA Indemnity Insurance Rules 2011.

## 8.2 Defined terms

In this contract:

**Cessation** means where the Insured Firm's practice ceases during or on expiry of the Period of Insurance and the Insured Firm has not obtained succeeding insurance in compliance with the Minimum Terms and Conditions.

**Circumstances** means an incident, occurrence, fact, matter, act or omission which may give rise to a Claim in respect of civil liability.

**Claim** means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an Insured Firm and/or any Insured to remedy a breach of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the SRA Accounts Rules) which replace the Solicitors' Accounts Rules 1998 in whole or in part, shall be treated as a Claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the Solicitors Act 1974) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the Insured Firm or the failure of such bank or building society generally to repay monies on demand.

**Claimant** means a person or entity which has made or may make a Claim including a Claim for contribution or indemnity.

**Defence Costs** means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in:

- (a) defending any proceedings relating to a Claim; or
- (b) conducting any proceedings for indemnity, contribution or recovery relating to a Claim; or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim; or
- (d) acting for any Insured in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of The Law



Society of England and Wales (including, without limitation, the Solicitors Regulation Authority and the Solicitors Disciplinary Tribunal)).

Defence Costs do not include any internal or overhead expenses of the Insured Firm or the Insurer or the cost of any Insured's time.

**Employee** means any person other than a Principal:

- (a) employed or otherwise engaged in the Insured Firm's Practice (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or lawyer, consultant, associate, locum tenens, agent, appointed person (as defined in the SRA Indemnity Insurance Rules 2011), office or clerical staff member or otherwise;
- (b) seconded to work in the Insured Firm's Practice; or
- (c) seconded by the Insured Firm to work elsewhere.

Employee does not include any person who is engaged by the Insured Firm under a contract for services in respect of any work where that person is required, whether under the SRA Indemnity Insurance Rules 2011 or under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

The **Excess** is the first amount of each and every Claim to be borne by the Insured in accordance with clause 3.1.

**Insured** means each person and entity named or described as a person to whom cover under this contract extends.

**Insured Firm** means the Firm (as defined for the purposes of the SRA Indemnity Insurance Rules 2011) which has entered into this contract.

**Insured Firm's Practice** means:

- (a) the legal Practice carried on by the Insured Firm as at the commencement of the Period of Insurance; and
- (b) the continuous legal Practice preceding and succeeding the Practice referred to in paragraph (a) (irrespective of changes in ownership of the Practice or in the composition of any Partnership which owns or owned the Practice).

**Insurer** means the underwriter(s) of this contract as specified in the Schedule, including, where applicable, such underwriter(s) acting through the manager for the time being of the Assigned Risks Pool.

**Limited Liability Partnership** means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

**Minimum Terms and Conditions** means the minimum terms and conditions required by the SRA Indemnity Insurance Rules 2011 for insurance commencing at inception of the Period of Insurance.

**Partner** means a person who is or is held out to be a partner in a Partnership.

**Partnership** means an unincorporated Insured Firm in which persons are or are held out as partners and does not include an Insured Firm incorporated as a Limited Liability Partnership.

**Period of Insurance** means the period for which this contract operates expiring at midnight on 30 September 2012.

**Principal** means:

- (a) where the Insured Firm is or was:

- (i) a Sole Practitioner - that practitioner;
  - (ii) a Partnership - each Partner;
  - (iii) a company with a share capital - each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) beneficially owns the whole or any part of a share in the company; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the company.
  - (iv) a company without a share capital – each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) is a member of the company; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;
  - (v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who is the ultimate owner of the whole or any part of a body corporate or other legal person which is member of the Limited Liability Partnership.
- (b) where a body corporate or other legal person is a Partner in the Insured Firm, all solicitors, Registered European Lawyers or Registered Foreign Lawyers who are within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph a(v) of this definition.

**Prior Practice** means each Practice to which the Insured Firm's Practice is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions.

**Private Legal Practice** means the provision of services in private Practice as a solicitor or registered European lawyer including, without limitation:

- (a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007 or the SRA Practice Framework Rules 2011 ; and
- (b) the provision of such services as a secondee of the Insured Firm; and
- (c) any Insured acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a Practice; and
- (d) the provision of such services by any Employee; and
- (e) the provision of such services pro bono publico.

Private Legal Practice does not include:

- (i) practising as an Employee of an employer other than a solicitor, a registered European lawyer, a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007 or the SRA Practice Framework Rules 2011, or a Recognised Body; or

- (ii) discharging the functions of any of the following offices or appointments:
  - (A) judicial office;
  - (B) Under Sheriffs;
  - (C) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (D) Justices' Clerks; or
  - (E) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

**Recognised Body** means a body for the time being recognised by the Solicitors Regulation Authority under Section 9 of the Administration of Justice Act 1985 and the SRA Recognised Bodies Regulations 2009.

**Relevant Recognised Body** means a Recognised Body other than:

- (a) an unlimited company, or an overseas company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (b) a nominee company only, holding assets for clients of another Practice; and
  - (i) it can act only as agent for the other Practice; and
  - (ii) all the individuals who are Principals of the Recognised Body are also Principals of the other Practice; and
  - (iii) any fee or other income arising out of the Recognised Body accrues to the benefit of the other Practice or
- (c) a partnership in which none of the partners is a limited company, a Limited Liability Partnership or a legal person whose members have limited liability; or
- (d) a Sole Practitioner that is a Recognised Body.

**Schedule** means the Schedule attached to this contract.

**Society** means the Law Society of England and Wales.

**Sole Practitioner** means a solicitor or registered European lawyer practicing as a sole Principal but does not include a solicitor or registered European lawyer practicing in-house.

**Successor Practice** means a Practice identified in this definition as 'B', where:

- (a) 'A' is the Practice to which B succeeds; and
- (b) 'A's owner' is the owner of A immediately prior to transition; and
- (c) 'B's owner' is the owner of B immediately following transition; and
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal Practice.

B is a Successor Practice to A where:

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
- (ii) (where A's owner was a Sole Practitioner and the transition occurred on or before 31 August 2000) - the Sole Practitioner is a Principal of B's owner; and/or
- (iii) (where A's owner was a Sole Practitioner and the transition occurred on or after 1 September 2000) - the Sole Practitioner is a Principal or Employee of B's owner; and/or
- (iv) (where A's owner was a Recognised Body) - that body is a Principal of B's owner; and/or
- (v) (where A's owner was a Partnership) - the majority of the Principals of A's owner have become Principals of B's owner; and/or
- (vi) (where A's owner was a Partnership and the majority of Principals of A's owner did not become Principals of the owner of another legal Practice as a result of the transition) - one or more of the Principals of A's owner have become Principals of B's owner and:
  - (A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
  - (B) B is carried on from the same premises as A; and/or
  - (C) the owner of B acquired the goodwill and/or assets of A; and/or
  - (D) the owner of B assumed the liabilities of A; and/or
  - (E) the majority of staff employed by A's owner became employees of B's owner.

Notwithstanding the foregoing, B is not a Successor Practice to A under paragraph (ii), (iii), (iv), (v) or (vi) if another Practice is or was held out by the owner of that other Practice as the successor of A or as incorporating A, provided that there is insurance complying with these minimum terms and conditions in relation to that other Practice.

**Sum Insured** means the aggregate limit of liability of each Insurer under this contract.

## 9 Governing law

- 9.1 This insurance shall be governed by and interpreted in accordance with the laws of England and Wales.

**Schedule**

**1 The Insured Firm**

The Insured Firm is:

**2 Parties**

This contract is made between the Insurer, the Insured Firm, and each Principal of the Insured Firm (including, where the Insured Firm is a Sole Practitioner, any person held out as a Partner of that practitioner) and each such Principal is jointly and severally liable to the Insurer for all sums due to the Insurer under this contract in accordance with Rule 10.3 of the SRA Indemnity Insurance Rules 2011.

**3 The Insurer**

The Insurer is:

[The Lead Insurer is: ]

**4 Sum Insured**

The Sum Insured for any one Claim (exclusive of Defence Costs) is [£2 million / £3 million].

**5 [Limit of Indemnity hereunder]**

[..... any one claim excess of ..... (the **Underlying Limit**)]

**[Proportionate share of liability (%)]**

[.....]

**6 The Excess**

The Excess is:

**7 Period of Insurance**

The Period of Insurance is from:

to midnight on:

## **Part 2**

### **Contract of Assigned Risks Pool run-off insurance**

If an Insured Firm is issued with an ARP Run-off Policy, run-off cover shall be provided through the ARP, which shall indemnify each Insured in accordance with clauses 1.1 to 1.8 of the ARP Policy set out in Part 1 of Schedule 2, (but subject to the limits, exclusions and conditions of the ARP Policy).

The period of cover provided by the ARP Run-off Policy shall be as determined under Rule 13.5.

## **Part 3**

### **Excess Indemnity**

If cover is provided through the ARP jointly with other Qualifying Insurers on an excess of loss basis, and the ARP is writing one of the excess layers, the terms of the ARP Policy shall be as set out in Part 1 of Schedule 2, but subject to the following terms:

- 1 Clause 3 shall not apply in relation to the excess layer.
- 2 The following additional terms shall apply:

#### **1 Additional provisions**

- 1.1 The Insurer is liable for an amount representing the excess over the Underlying Limit on an Ultimate Net Loss basis. The Ultimate Net Loss shall mean the sum which is finally ascertained to be the sum which Insurers are liable for as a result of the loss insured but shall exclude Defence Costs.
- 1.2 All salvages, recoveries or payments recovered or received after a settlement under this Policy shall be applied as if recovered or received before the settlement and all necessary adjustments shall be made by the parties. This shall not prevent any such recovery being made before the Ultimate Net Loss is ascertained.
- 1.3 If a loss or liability arises to which the Insurer may be liable to contribute, no Defence Costs shall be incurred on behalf of it without its prior consent. Where a Claim is settled for a sum not exceeding the Underlying Limit no Defence Costs shall be payable by the Insurer.
- 1.4 The Lead Insurer shall not settle any Claim for a sum exceeding the Underlying Limit without the prior consent of the Insurer (such consent not to be unreasonably withheld or delayed).

## Schedule 3

### SRA Indemnity Insurance Rules 2011

The commentary provided with these Rules does not form part of the Rules, is provided for guidance only, and does not affect the meaning or interpretation of the Rules in any way.

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## PART 1: GENERAL

### 1 Authority and commencement

1.1 These Rules are made on the [the date of the approval of the Legal Services Board] by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

1.2 These Rules come into force on 1 October 2011.

1.3 These Rules require *solicitors, RELs, RFLs, recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *qualifying insurers* with effect from 1 October 2011.

*Commentary: These Rules apply to:*

- *solicitors*
- *RELs*
- *RFLs*
- *recognised bodies and their managers and*
- *licensed bodies in respect of their regulated activities (but not to any other activities that may be undertaken by the licensed body concerned)*

*carrying on private practice in England and Wales as a firm at any time after 1 October 2011. Refer to the definitions in Rule 3 for guidance on the exact meanings of these terms.*

1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 2011.

*Commentary: Before 1 September 2000, firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, firms have been required to take out insurance in accordance with the Solicitors' Indemnity Insurance Rules. From 1 October 2011, firms must take out insurance in accordance with these Rules with one or more qualifying insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.*

1.5 The Solicitors' Indemnity Insurance Rules 2010 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2011 but they shall remain in force in respect of the *indemnity period* from 1 October 2010 to 30 September 2011 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

*Commentary: You should refer to previous Solicitors' Indemnity Insurance Rules in relation to earlier indemnity periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2010 and the SRA Indemnity Insurance Rules 2011.*

### 2 Citation

2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 2011.

### 3 Definitions and interpretation

3.1 In these Rules, unless the context otherwise requires:

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"AJA" means the Administration of Justice Act 1985;

"*appointed person*" means any *person* who is designated as a fee-earner in accordance with any arrangements made from time to time between the *firm* and the Legal Services Commission pursuant to the provisions of the Access to Justice Act 1999, regardless of whether the services performed for the *firm* by that *person* in accordance with Rule 4.1 are performed pursuant to such arrangements or otherwise, and who is engaged by the *firm* under a contract for services in the course of the *private practice* of the *firm*;

*Commentary:* Under Rule 4, work carried out by a designated fee-earner may be covered under the qualifying insurance of the firm for which they do that work.

"*approved regulator*" means any body listed as an approved regulator in paragraph 1 of Schedule 4 to the LSA or designated as an approved regulator by an order under paragraph 17 of that Schedule;

"*ARP*" means the Assigned Risks Pool, namely, arrangements by which an *eligible firm* may obtain professional indemnity insurance against civil liability by means of an *ARP policy* on the terms set out in Part 3 of these Rules;

*Commentary:* The ARP is designed to ensure that professional indemnity insurance will be available to all eligible firms. However, it is important to note that premiums payable to the ARP are intended to be high. Refer to Appendix 2 to these Rules for the method of calculation of the ARP premium.

"*ARP default premium*" means the premium calculated in accordance with Part 2 of Appendix 2 to these Rules;

"*ARP manager*" means the manager of the *ARP* being any *person* from time to time appointed by the *SRA* to carry out all or any particular functions of the manager of the *ARP* or the *SRA* and any such *person*;

"*ARP policy*" means a contract of professional indemnity insurance issued by the *ARP manager* on behalf of *qualifying insurers* to an *eligible firm* in the *ARP* including where the context permits a *policy* provided to a *firm in default*;

*Commentary:* A copy of the standard-form *ARP policy* is available on the website of the *SRA* at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the *SRA*. Contact details appear at the end of the introductory commentary.

"*ARP premium*" means the premium calculated in accordance with Part 1 of Appendix 2 to these Rules;

"*ARP run-off policy*" means a contract of professional indemnity insurance issued by the *ARP manager* on behalf of *qualifying insurers* to a *run-off firm* in the *ARP*;

"*ARP run-off premium*" means the premium calculated in accordance with Part 3 of Appendix 2 to these Rules;

"*authorised insurer*" means:

- (a) a person who has permission under Part IV of the *FSMA* to effect or carry out contracts of insurance of a relevant class;
- (b) a person who carries on an insurance market activity, within the meaning of section 316(3) of *FSMA*;
- (c) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to *FSMA*, which has permission under paragraph 15 of that Schedule (as a result of qualifying for

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authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or

- (d) a person who does not fall within paragraph (a), (b) or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the UK

where relevant “class” has the meaning set out in section 87(1B) of the SA provided that this definition must be read with section 22 of FSMA, any relevant order under that section and Schedule 2 to FSMA;

*Commentary:* Under the SA, it is only permitted to enter into arrangements with authorised insurers (including relevant Lloyd’s syndicates), as defined under section 87(1A) of that Act. A Qualifying insurer must be authorised to write new business on the date on which a policy incepts, but the policy will remain a policy of qualifying insurance until it expires, even if the qualifying insurer then ceases to write, or be authorised to write, new insurance business.

“claim” means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an *insured firm* and/or any *insured* to remedy a breach of the Solicitors’ Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the SRA Accounts Rules) which replace the Solicitors’ Accounts Rules 1998 in whole or in part, shall be treated as a claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1 of the MTC, whether or not any *person* makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the SA) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the *insured firm* or the failure of such bank or building society generally to repay monies on demand;

“claimant” means a *person* or entity which has made or may make a *claim* including a *claim* for contribution or indemnity;

“Companies Acts” means the Companies Act 1985 and the Companies Act 2006;

“company” means a company registered under the *Companies Acts*, an overseas company incorporated in an *Establishment Directive* state and registered under the Companies Act 1985 and/or the Companies Act 2006 or a *societas Europaea*;

“Council” has the meaning given in section 87 of the SA;

“director” means a director of a *company*; and in relation to a *societas Europaea* includes:

- (a) in a two-tier system, a member of the management organ and a member of the supervisory organ; and
- (b) in a one-tier system, a member of the administrative organ;

“difference in conditions policy” means a contract of professional indemnity insurance, made between one or more *qualifying insurers* and a *firm*, which provides cover including the MTC as modified in accordance with paragraph 2 of Appendix 3 to these Rules;

“eligible firm” means any *firm* which is eligible to be in the ARP, being any *firm* other than:

- (a) a *firm* that has been in the ARP or, in respect of a *licensed body*, any similar arrangement for the provision of professional indemnity insurance for six months or more in the four *indemnity periods* immediately prior to the date from which cover is sought, without the prior written approval of the *Council* unless:

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- (i) subject to sub-paragraph (ii), immediately prior to 1 October 2011 the *firm* was in the *ARP* and had been in the *ARP*, without the prior written approval of the *Council*, for less than twelve months in the four *indemnity periods* immediately prior to that date, in which case the *firm* is eligible to be in the *ARP* only for any unexpired part of the twelve month period; or
  - (ii) immediately prior to 1 October 2010 the *firm* was in the *ARP* and had been in the *ARP*, without the prior written approval of the *Council*, for less than twenty four months (or twenty five months in the case of a *firm* which was in the *ARP* for the whole of the *indemnity period* from 1 September 2003 to 30 September 2004) in the four *indemnity periods* immediately prior to that date, in which case the *firm* is eligible to be in the *ARP* only for any unexpired part of the twenty four or twenty five month period (as the case may be);
- (b) a *firm* determined by the *Council* not to be an eligible firm by reason of its being treated as one single *firm* with one or more other *firms* already in the *ARP* for the purposes of Rule 12.5 or Rule 12.6; or
  - (c) subject to Rule 12.3, a *firm* that at the end of any *indemnity period* to which these Rules apply is in *policy default*; or
  - (d) a *firm* which, at the time it applies to enter the *ARP* already has in place *qualifying insurance* outside the *ARP* for the indemnity period in which that *firm* requests cover through the *ARP* to commence; or
  - (e) a *firm* that has never had in place *qualifying insurance* except through the *ARP*, unless:
    - (i) subject to sub-paragraph (ii), immediately prior to 1 October 2011 the *firm* was in the *ARP* and had been in the *ARP*, without the prior written approval of the *Council*, for less than twelve months in the four *indemnity periods* immediately prior to that date; or
    - (ii) immediately prior to 1 October 2010 the *firm* was in the *ARP* and had been in the *ARP*, without the prior written approval of the *Council*, for less than twenty four months (or twenty five months in the case of a *firm* which was in the *ARP* for the whole of the *indemnity period* from 1 September 2003 to 30 September 2004) in the four *indemnity periods* immediately prior to that date,in which case the *firm* is eligible to be in the *ARP* only for any unexpired part of the twelve, twenty four or twenty five month period (as the case may be);

*Commentary:* *Firms cannot remain insured through the ARP indefinitely. A firm which at 1 October 2010 had not been in the ARP during the previous four indemnity periods but obtained cover from the ARP during the indemnity period ending on 30 September 2011 is eligible for cover through the ARP for a maximum of twelve months less the aggregate number of months in which that firm was insured through the ARP during that and the previous four indemnity periods. A firm which at 1 October 2010 had been in the ARP during the previous four indemnity periods is eligible for cover through the ARP for a maximum of twenty four months (or twenty five months in the specified circumstances) less the aggregate number of months in which that firm was insured through the ARP during those previous four indemnity periods. For example, a firm which has been insured through the ARP for the last five months of the 2009/10 indemnity period and twelve months in the 2010/11 indemnity period would be eligible to be insured through the ARP for the balance of the twenty four months (i.e. seven months) in the 2011/12 indemnity period. Additionally, for the 2011/2012 indemnity year a firm which has not been insured through the ARP in any of the four indemnity periods expiring on 1 October 2011 will, as from that date be entitled to be insured through the ARP for a maximum of six months including during the four indemnity years prior to the date from which cover is sought.*

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*Subject to any waiver granted under Rule 19, any firm which no longer fulfils the definition of an eligible firm is therefore required to obtain qualifying insurance from a qualifying insurer outside the ARP, or to cease practice. A newly created firm not previously regulated by the SRA or a non-SRA firm which elects (and is accepted) to become regulated by the SRA must obtain qualifying insurance in the open market outside the ARP.*

*In addition, a firm is not eligible to join the ARP if it has already obtained qualifying insurance from a qualifying insurer outside the ARP for the relevant indemnity period.*

“*Establishment Directive*” means the Establishment of Lawyers Directive 98/5/EC;

“*Establishment Directive state*” means a state to which the *Establishment Directive* applies;

“*firm*” means:

- (a) any *sole practitioner*, or
- (b) any *recognised body* (as constituted from time to time); or
- (c) any *solicitor* or *REL* who is a *sole practitioner*, unless that *sole practitioner* is a *non-SRA firm*; or
- (d) any *partnership* (as constituted from time to time) which is eligible to become a *recognised body* and which meets the requirements applicable to *recognised bodies* set out in the *SRA Practice Framework Rules*, *SRA Recognised Bodies Regulations* (until [date in March 2012]), and the *SRA Authorisation Rules* (from [date in March 2012]) unless that *partnership* is a *non-SRA firm*; or
- (e) any *licensed body* in respect of its *regulated activities*,

whether before or during any relevant *indemnity period*;

*Commentary: If you are unsure whether you or your business falls within this definition, you should consult the SRA. Contact details appear at the end of the introductory commentary.*

“*firm in default*” means a *firm* that has failed to obtain *qualifying insurance* outside the ARP and which,

- (a) in the case of an *eligible firm*, has failed to apply in accordance with these Rules to be admitted into the ARP before either the start of any *indemnity period* to which these Rules apply or the start of its *practice*, whichever is the later; or
- (b) in the case of a *firm* which is not an *eligible firm*, is a *firm* which is carrying on or continuing to carry on a *practice* without *qualifying insurance* outside the ARP; or
- (c) in the case of a *run-off firm*, is a *run-off firm* which has failed to make an application in the manner prescribed by these Rules to be issued with an *ARP run-off policy*; or
- (d) is a *firm* which is a *firm in default* by virtue of Rule 10.4,

or a *firm* which, having previously obtained *qualifying insurance*, has failed to obtain alternative *qualifying insurance* when required to do so in accordance with Rule 6;

*Commentary: A firm in default, and each principal in that firm, will be required to pay the ARP default premium, and/or the ARP run-off premium to the ARP, and each principal in that firm will have committed a disciplinary offence by having*

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*breached these Rules. Refer to Part 4 of these Rules for the provisions that apply to a firm in default.*

“FSMA” means the Financial Services and Markets Act 2000;

“*indemnity period*” means the period of one year starting on 1 September 2000, 2001 or 2002, the period of 13 calendar months starting on 1 September 2003, or the period of one year starting on 1 October in any subsequent calendar year;

*Commentary: Under the qualifying insurer’s agreement, each policy is required to expire at the end of an indemnity period. It is envisaged that any change to these Rules or to the MTC would take effect from the start of an indemnity period, so that at any one time, all policies in force comply with the same version of these Rules and the MTC.*

*Qualifying insurers are permitted under the qualifying insurer’s agreement to issue a policy covering more than one indemnity period, provided that the policy expires at the end of a subsequent indemnity period, and provided that the terms of the policy are amended if required to reflect any change to the Rules and/or the MTC while the policy is in force.*

“*insolvency event*” means in relation to a *qualifying insurer*:

- (a) the appointment of a provisional liquidator, administrator, receiver or an administrative receiver; or
- (b) the approval of a voluntary arrangement under Part I of the Insolvency Act 1986 or the making of any other form of arrangement, composition or compounding with its creditors generally; or
- (c) the passing of a resolution for voluntary winding up where the winding up is or becomes a creditors’ voluntary winding up under Part IV of the Insolvency Act 1986; or
- (d) the making of a winding up order by the court; or
- (e) the making of an order by the court reducing the value of one or more of the *qualifying insurer’s* contracts under section 377 of FSMA; or
- (f) the occurrence of any event analogous to any of the foregoing insolvency events in any jurisdiction outside England and Wales;

“*insured*” means each person and entity named or described as a person to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 of the MTC and, in relation to *prior practices* and *successor practices* respectively, those referred to in clauses 1.5 and 1.7 of the MTC ;

“*insurer*” means the underwriter(s) of the insurance;

“*legal activity*” has the meaning given in section 12 of the LSA, and includes any *reserved legal activity* and any other activity which consists of the provision of legal advice or assistance, or representation in connection with the application of the law or resolution of legal disputes;

“*Legal Ombudsman*” means the scheme administered by the Office for Legal Complaints under Part 6 of the LSA;

“*licensed body*” means a body licensed by the SRA under Part 5 of the LSA;

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*“licensing authority”* means an *approved regulator* which is designated as a *licensing authority* under Part 1 of Schedule 10 to the *LSA*, and whose licensing rules have been approved for the purposes of the *LSA*;

*“LLP”* means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;

*“manager”* means:

- (a) a *member* of an *LLP*;
- (b) a *director* of a *company*;
- (c) a *partner* in a *partnership*; or
- (d) in relation to any other body, a member of its governing body;

*“member”* means:

- (a) in relation to a *company* a *person* who has agreed to be a member of the *company* and whose name is entered in the *company*’s register of members; and
- (b) in relation to an *LLP*, a member of that *LLP*;

*“MTC”* means the minimum terms and conditions with which a *policy of qualifying insurance* is required by these Rules to comply, a copy of which is annexed as Appendix 1 to these Rules;

*Commentary:* All qualifying insurers agree under the qualifying insurer’s agreement to issue policies which comply with the MTC. However, under Rule 4 it remains the duty of each firm and each principal within that firm to ensure that the policy issued to it is issued by an insurer which is a qualifying insurer for the indemnity period in question, and that it complies with the MTC. The SRA does not approve qualifying insurers, nor does it review their policy terms.

*The standard form ARP policy does comply with the MTC.*

*In addition, each firm should satisfy itself that the professional indemnity insurance that it has in place is sufficient. This may mean that the firm takes out additional insurance over and above that provided under the MTC. Any such “top-up” cover is outside the scope of these Rules, and does not have to be taken out with a qualifying insurer.*

*Most recognised bodies are required to obtain cover complying with the MTC and with a sum insured of £3 million, rather than £2 million for other firms. The definition of “relevant recognised body” in clause 8.2 of the MTC indicates which recognised bodies this requirement applies to.*

*“non-SRA firm”* means a *sole practitioner, partnership, LLP* or *company* which is not authorised to practise by the *SRA*, and which is either:

- (a) authorised or capable of being authorised to practise by another *approved regulator*; or
- (b) not capable of being authorised to practise by any *approved regulator*;

*“partner”* means a *person* who is or is held out as a partner in a *partnership*;

*“partnership”* means an unincorporated body and does not include a body incorporated as an *LLP*;



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*Commentary: A limited liability partnership is treated for these purposes as a recognised body, rather than as a partnership.*

*“period of default” means in relation to a firm in default the period starting with the date when such firm first became a firm in default and ending with the date when it ceased to be a firm in default;*

*“person” means an individual or a body of persons (corporate or unincorporated);*

*“policy” means a contract of professional indemnity insurance made between one or more persons, each of which is a qualifying insurer, and a firm, including where the context permits an ARP policy and an ARP run-off policy;*

*“policy default” means a failure on the part of a firm or any principal of that firm:*

- (a) to pay for more than two months after the due date for payment all or any part of the premium or any other sum due in respect of a policy (including without limitation any payment due under Rule 14.1); or
- (b) to pay for more than two months after the due date for payment all or any part of any ARP premium, any ARP default premium, or any ARP run-off premium, or any instalment payable in relation thereto whether payable to the ARP manager or otherwise; or
- (c) to reimburse within two months a qualifying insurer (including the ARP manager on behalf of qualifying insurers) in respect of any amount falling within a firm’s policy excess which has been paid on an insured’s behalf to a claimant by a qualifying insurer or by the ARP manager.

For the purposes of this definition, the due date for payment means, in respect of any policy or any payment to be made under any policy:

- (i) the date on which such payment fell due under the terms of the policy or any related agreement or arrangement; or
- (ii) if a firm was first required under these or any previous Rules to effect such a policy prior to the date on which it did so, the date if earlier on which such payment would have fallen due had such policy been effected by the firm when it was first required to do so under these Rules or any previous rules;

*Commentary: Principals are committing a disciplinary offence if they or their firm is in policy default, whether as a result of failing to pay premium when demanded or as a result of failing to take out a policy when required to do so. In addition, their firm will cease to be an eligible firm for the purpose of taking out or renewing an ARP policy.*

*“practice” means the whole or such part of the private practice of a firm as is carried on from one or more offices in England and Wales;*

*Commentary: The Rules require firms to take out policies which include cover in accordance with the MTC for that part of their practice carried on from offices located in England and Wales. They do not apply to any part of the practice of the firm carried on from offices outside England and Wales (although outcome OP2 in Chapter 1 of the SRA Code of Conduct does apply in such cases). However, the cover in relation to the practice carried on from offices located in England and Wales must extend to acts or omissions wherever in the world they occur, and would therefore include, for example, a principal based in a firm’s London office who travels to Paris to advise a client.*

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*If you are unsure whether you or your business falls within this definition, you should consult the SRA. Contact details appear at the end of the introductory commentary.*

*“principal” means:*

- (a) where the *firm* is or was:
  - (i) a *sole practitioner* - that practitioner;
  - (ii) a *partnership* - each *partner*;
  - (iii) a *company* with a share capital - each *director* of that *company* and any *person* who:
    - (A) is held out as a *director*; or
    - (B) beneficially owns the whole or any part of a share in the *company*; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the *company*;
  - (iv) a *company* without a share capital – each *director* of that *company* and any *person* who:
    - (A) is held out as a *director*; or
    - (B) is a *member* of the *company*; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal *person* which is a *member* of the *company*;
  - (v) an *LLP* – each *member* of that *LLP*, and any *person* who is the ultimate owner of the whole or any part of a body corporate or other legal *person* which is *member* of the *LLP*;
- (b) where a body corporate or other legal *person* is a *partner* in the *firm*, any *person* who is within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph (a)(v) of this definition;

*Commentary: It is the duty of each principal, under Rule 4, to ensure that the firm has qualifying insurance at all times.*

*“private practice”:*

- (a) in relation to a *firm* which is a *licensed body* means its *regulated activities*; and
- (b) subject to paragraph (a) of this definition, in relation to all *firms* includes without limitation all the professional services provided by the *firm* including acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a *practice*, and includes services provided pro bono publico,

but does not include:

- (c) *practice* carried on by a *solicitor* or *REL* in the course of employment with an employer other than a *firm*; or
- (d) *practice* carried on through a *non-SRA firm*; or

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- (e) discharging the functions of any of the following offices or appointments:
- (i) judicial office;
  - (ii) Under Sheriffs;
  - (iii) members and clerks of such tribunals, committees, panels and boards as the *Council* may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (iv) Justices' Clerks;
  - (v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria;
  - (vi) such other offices as the *Council* may from time to time designate; or
- (f) *practice* consisting only of providing professional services without remuneration for friends, relatives, or to companies wholly owned by the *solicitor* or *REL's* family, or registered charities;

*Commentary: If you are unsure whether you or your practice falls within this definition, you should consult the SRA. Contact details appear at the end of the introductory commentary.*

*"qualifying insurance"* means a single *policy* which includes the *MTC*, or more than one *policy* which, taken together, include the *MTC*, and each of which includes the *MTC* except only in relation to the *sum insured* (as defined in the *MTC*);

*Commentary: All firms are required to take out and maintain, as a minimum, qualifying insurance. This may take the form of a single policy, or policies written by more than one qualifying insurer which together provide the minimum cover required under these Rules.*

*"qualifying insurer"* means an *authorised insurer* which has entered into a *qualifying insurer's agreement* with the *Society* which remains in force for the purposes of underwriting new business at the date on which the relevant contract of *qualifying insurance* is made;

*Commentary: A list of all qualifying insurers appears on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the SRA. Contact details appear at the end of the introductory commentary.*

*"qualifying insurer's agreement"* means an agreement in such terms as the *Society* may from time to time prescribe setting out the terms and conditions on which a *qualifying insurer* may provide professional indemnity insurance to *solicitors* and others in *private practice* in England and Wales;

*Commentary: A copy of this standard form agreement, which each qualifying insurer is required to enter into, is available on request from the SRA. Contact details appear at the end of the introductory commentary.*

*"recognised body"* means a body for the time being recognised by the *SRA* under section 9 of the *AJA*;

*"regulated activity"*

- (a) subject to sub-paragraph (b) below, means:

- (i) any *reserved legal activity*;
  - (ii) any other *legal activity*; and
  - (iii) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*;
- (b) in the *SRA Financial Services (Scope) Rules*, means an activity which is specified in the *Regulated Activities Order*;

“*Regulated Activities Order*” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“*REL*” means registered European lawyer, namely, an individual registered with the *SRA* under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000 (SI 2000 no. 1119);

“*RFL*” means registered foreign lawyer, namely an individual registered with the *SRA* under section 89 of the Courts and Legal Services Act 1990;

“*reserved legal activity*” has the meaning given in section 12 of the *LSA*, and includes the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths, as defined in Schedule 2 of the *LSA*;

“*Rules*” means these rules as from time to time modified or amended;

“*run-off firm*” means a *firm* or former *firm* which has ceased to practise in circumstances where, in accordance with paragraph 5.1 of the *MTC*, run-off cover is not required to be provided by any *qualifying insurer*;

“*SA*” means the Solicitors Act 1974;

“*societas Europaea*” means a European public limited liability company within the meaning of article 1 of Council Regulation 2157/2001/EC;

“*Society*” means the Law Society, in accordance with section 86 of the *SA*;

“*sole practitioner*” means a *solicitor* or *REL* practising as a sole *principal*, but does not include a *solicitor* or *REL* practising in-house;

“*solicitor*” means a *person* who has been admitted as a *solicitor* of the Senior Courts of England and Wales and whose name is on the roll kept by the *Society* under section 6 of the *SA*, save in these Rules includes a *person* who practises as a *solicitor* whether or not he or she has in force a practising certificate and also includes practice under home title of a former *REL* who has become a *solicitor*;

“*special measures*” means such measures as the *Council* may from time to time require with a view to reducing the risk of claims being made against a *firm* in the future or with a view to enabling a *firm* in the future to obtain *qualifying insurance* outside the *ARP* including, without limitation, requiring a *firm* to establish, agree with the *SRA* and implement either:

- (a) a rehabilitation plan; or
- (b) a plan for the orderly closure of the *firm* in a manner which fully protects its clients’ interests,

in either case on such terms, in such format and with such content as the *SRA* may require;

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“SRA” means the Solicitors Regulation Authority and reference to the SRA as an *approved regulator* or *licensing authority* means the SRA carrying out regulatory functions assigned to the Society as an *approved regulator* or *licensing authority*;

“SRA Accounts Rules” means the SRA Accounts Rules 2011;

“SRA Authorisation Rules” means the SRA Authorisation Rules for Recognised Bodies and Licensable Bodies 2011;

“SRA Financial Services (Scope) Rules” means the SRA Financial Services (Scope) Rules 2001;

“SRA Practice Framework Rules” means the SRA Practice Framework Rules 2011;

“successor firm” means for the purpose of Rule 12 of these Rules any *firm* or *firms* resulting from:

- (a) a split in the *practice* of a *firm* that has at any time been in the *ARP*; or
- (b) the merger, acquisition, absorption or any other form of takeover of a *firm* that has at any time been in the *ARP*;

“supplementary run-off cover” means run-off cover provided by the Solicitors Indemnity Fund following the expiry of run-off cover provided to a *firm* in accordance with these Rules or otherwise under a *policy* (but subject to compliance with the *MTC*).

### 3.2 Interpretation

In these Rules, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) a reference to a Rule is to a Rule forming part of these Rules;
- (c) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at the date of the commencement of these Rules, or after the date of the commencement of these Rules;
- (d) headings are for ease of reference only and shall not affect the interpretation of these Rules;
- (e) explanatory notes and commentary shall be ignored in interpreting these Rules; and
- (f) the appendices to these Rules form part of these Rules.

These Rules will be governed by and interpreted in accordance with English law.

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## PART 2: RESPONSIBILITY AND MONITORING

### 4 Obligation to effect insurance

- 4.1 All firms carrying on a practice during any indemnity period beginning on or after 1 October 2011 must take out and maintain qualifying insurance under these Rules.
- 4.2 A solicitor or REL is not required to take out and maintain qualifying insurance under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the practice of another firm (including without limitation as an appointed person), where that firm is required by these Rules to take out and maintain qualifying insurance.
- 4.3 A run-off firm must apply in accordance with these Rules to be issued with an ARP run-off policy.

*Commentary:* Under these rules, firms have a continuing obligation to ensure that they have qualifying insurance in place at all times with effect from 1 October 2011. Refer to the definitions of practice, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a qualifying insurer. A list of qualifying insurers appears on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the SRA. Contact details appear at the end of the introductory commentary.

*Firms should note in particular that work carried out by an appointed person for that firm may be covered by the firm's policy, whether that person is engaged as an employee or on a contract for services.*

*If a firm cannot obtain a policy from a qualifying insurer it should apply to join the ARP in accordance with Part 3 of the Rules, if it is an eligible firm. If it is not an eligible firm, it must cease practice.*

*Note that, under the MTC, a policy, once taken out, cannot be cancelled before the end of an indemnity period unless:*

- (1) the policy is an ARP policy and the firm has replaced it with a policy of qualifying insurance outside the ARP; or*
- (2) the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or*
- (3) it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or*
- (4) in the case of an ARP policy, it subsequently transpires that the firm was not, or has ceased to be, an eligible firm; or*
- (5) the qualifying insurer which issues the policy becomes the subject of an insolvency event, and the firm has replaced the policy with another policy of qualifying insurance.*

*The effect of cancellation in the circumstances described in (3) or (4) above is that the firm ceases to have qualifying insurance in place with effect from the cancellation, and would therefore be in breach of Rule 4.1 if it were to carry on a practice thereafter without taking out a new policy.*

*Most recognised bodies are required to obtain cover complying with the MTC and with a sum insured of £3 million, rather than £2 million for other firms. The*

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*definition of "relevant recognised body" in clause 8.2 of the MTC indicates which recognised bodies this requirement applies to.*

- 4.4 The provisions of this Rule 4 shall be without prejudice to the ability of *firms* to include as insureds on a *policy persons* not required under these Rules to be insured.

## **5 Responsibility**

- 5.1 Each *firm* carrying on a practice during any *indemnity period* beginning on or after 1 October 2011, and any *person* who is a *principal* of such a *firm*, must ensure:

- (a) that the *firm* has in place and maintains *qualifying insurance* outside the ARP during any such *indemnity period*;

or, in the case of an *eligible firm*,

- (b) that the *firm* has applied to enter the ARP in accordance with the procedure set out in Rule 10;

in either case before the start of any relevant *indemnity period* or the start of *practice* whichever is later.

*Commentary: Note that the duty to ensure that qualifying insurance is in place rests not just on the firm as a whole, but also on every principal within that firm.*

- 5.2 A *run-off firm*, and any *person* who was a *principal* of that *run-off firm* immediately prior to it becoming a *run-off firm*, must ensure that the *run-off firm* has applied to enter the ARP in accordance with the procedure set out in Rule 13.4(a). Making such an application does not absolve any *firm* or *person* from any breach of Rule 5.1.

*Commentary: A firm which has continued to practise without qualifying insurance immediately prior to closing down is required to apply for run-off cover through the ARP, but the firm and any principal of the firm may still face action for a breach of Rule 5.1 for practising without qualifying insurance.*

## **6 Insolvency of qualifying insurer**

- 6.1 If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *qualifying insurer* (whether alone or together with other *qualifying insurers*) and that *qualifying insurer* is the subject of an *insolvency event* then, subject to any waiver under Rule 19.1, the *firm* and any *person* who is a *principal* of the *firm* must ensure:

- (a) that the *firm* has in place *qualifying insurance* with another *qualifying insurer* which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an *insolvency event*;

or, in the case of an *eligible firm*,

- (b) that the *firm* applies within that period of four weeks to enter the ARP in accordance with the procedure set out in Rule 10.

*Commentary: It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a qualifying insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a qualifying insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has qualifying insurance with a qualifying insurer which is the subject*

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*of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.*

## **7 Monitoring**

The *Council* may require from a *firm* or any *principal* in a *firm* carrying on, or reasonably believed by the *Council* to be carrying on, a *practice* such information and evidence as it may reasonably require to satisfy itself that such a *firm* has in place *qualifying insurance*.

## **8 RELs**

- 8.1 The special provisions contained in Appendix 3 to these Rules shall apply to a *firm* that has at least one *principal* who is a *REL*.

## **PART 3: THE ARP**

### **9 Operation of the ARP**

The *ARP* shall be managed by the *ARP manager*.

### **10 Applying to the ARP**

- 10.1 Where a *firm* carrying on a *practice* has not obtained *qualifying insurance* outside the *ARP* in respect of any *indemnity period* or part thereof to which these Rules apply it must, if an *eligible firm*, apply in accordance with the procedure set out in this Rule 10 to enter the *ARP*, subject to Rule 10.2, before the start of the relevant *indemnity period*.

*Commentary:* *A firm which for any reason does not have qualifying insurance in place should apply to the ARP before the start of the relevant indemnity period if it is an eligible firm. However, it is important to note that premiums payable to the ARP are intended to be high, and firms would therefore be prudent to seek quotations from qualifying insurers outside the ARP before the start of an indemnity period.*

*An ARP policy can be cancelled if it is replaced by a policy with a qualifying insurer. A return premium may be payable to a firm which cancels an ARP policy in these circumstances - refer to Appendix 2 for the basis on which the ARP premium and any return premium is calculated.*

*Firms should also be aware of the other consequences of being insured through the ARP set out in this part of the Rules, including the need to comply with any special measures under Rule 10, and the limitations on eligibility set out in the definition of "eligible firm".*

- 10.2 A *firm* must not start carrying on a *practice* without having obtained *qualifying insurance* outside the *ARP*.

*Commentary:* *Any firm wishing to start up a new practice must obtain qualifying insurance with a qualifying insurer other than the ARP, before starting practice. For the avoidance of doubt, a firm which has not previously been regulated by the SRA or a non-SRA firm that elects (and is accepted) for regulation by the SRA must also arrange qualifying insurance outside the ARP in order to commence carrying on a practice. Subject to this requirement, a new firm may start practice at any time during an indemnity period.*



- 10.3 By applying to enter the *ARP*, the *firm* and any *person* who is a *principal* of that *firm* agrees to, and (if the *firm* is admitted to the *ARP*) the *firm* and any *person* who is a *principal* of that *firm* shall be jointly and severally liable to:
- (a) pay the *ARP premium* in accordance with these Rules, together with any other sums due to the *ARP manager* under the *ARP policy*; and
  - (b) submit to such investigation and monitoring and to pay the *Society's* costs and expenses as referred to in Rule 11.2; and
  - (c) pay any costs and expenses incurred by the *Society* or the *ARP manager* incurred as a result of any failure or delay by the *firm* in complying with these Rules;

and shall be required to implement at the expense of the *firm* any *special measures*.

*Commentary:* *Firms within the ARP may be subject to a range of special measures. The appointed inspectors (in the first instance, the Forensic Investigations Unit of the Compliance Directorate) will visit a firm insured through the ARP to carry out investigation and monitoring of the firm. This is in order to determine what special measures are appropriate for that firm, and to ensure that those measures are fully implemented. It should be noted that the costs of investigation and monitoring by the Inspection & Investigation Directorate, costs and expenses incurred through any failure or delay by the firm to comply, and the implementation of the special measures will be payable by the firm concerned (and by any principal of that firm), in addition to paying the ARP premium.*

- 10.4 Any material misrepresentation made in an application for admission to the *ARP* shall, subject to any waiver under Rule 19.1, render the *firm* a *firm in default* for the purposes of Part 4 of these Rules. The provisions of that Part shall apply to the *firm* as if that *firm* had not been admitted to the *ARP* but neither the *firm* nor any *principal* of the *firm* shall be entitled to the refund of any *ARP premium* paid to the *ARP manager*. Any amount so paid shall be credited against any sums payable under Part 4 of these Rules.

*Commentary:* *Although an ARP policy, once issued, cannot be cancelled (unless and until a replacement policy with a qualifying insurer is issued to that firm), a firm which makes a material misrepresentation in its application to be admitted to the ARP will be nevertheless treated in the same way as a firm in default.*

- 10.5 The application for admission to the *ARP* must be made to the *ARP manager* on the proposal form provided by the *ARP manager*.
- 10.6 The applicant must state on the proposal form the date from which cover is sought. This date must not be earlier than the date on which the application is made for admission to the *ARP*. The applicant must also provide such other information as the *ARP manager* requires for the purposes of setting a premium.
- 10.7 If the applicant is a *firm in default* it must state on the proposal form that it is a *firm in default* and give the date of the start of the *period of default* from which retrospective cover is sought.

*Commentary:* *The ARP premium is calculated in accordance with a formula set out in Appendix 2, and is linked to the gross fees of the firm concerned. It is important to note that, under Rule 15, any material misrepresentation in an application will result in the firm being treated in the same way as a firm in default, including being liable to pay the ARP default premium.*

- 10.8 The *firm*, together with each *principal* of the *firm*, must ensure that the *firm's* application has been made and must provide the *ARP manager* with all information it reasonably requires to process the application.

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*Commentary: It is in the interests of the firm and each of the principals of that firm to verify that the application to enter the ARP has been received and that the firm is insured. An application should be made before the start of an indemnity period. Failure to comply with the requirements of this Rule and Rules 13 to 15 will result in the firm becoming a firm in default.*

- 10.9 If a *firm* has not received a written acknowledgement of its application from the *ARP manager* 30 days after making the application, or within such other period as is stated on the proposal form, the *firm* and any *person* who is a *principal* of the *firm* must seek written confirmation that the *firm's* application has been received by the *ARP manager*. If that written confirmation is not obtained within seven days after the end of the 30 days, or within seven days after such other period specified on the proposal form, the application shall be deemed not to have been made.
- 10.10 An applicant whose first application is deemed under Rule 10.9 not to have been made must, within seven days of the day when under Rule 10.9 the first application is deemed not to have been made, make a fresh application. The *firm* and any *person* who is a *principal* of the *firm* must ensure that the *firm* is in a position to prove to the reasonable satisfaction of the *Society* that the *firm's* fresh application was delivered within those seven days to the *ARP manager* at the address specified on the proposal form. Provided the *firm's* fresh application was so delivered, the application shall be treated as having been made at the date when the *firm's* first application was made. A *firm* that is not in a position to prove to the reasonable satisfaction of the *Society* that its fresh application was so delivered shall be deemed not to have made any application.
- 10.11 Provided that an application or, if necessary, a fresh application, has been made in accordance with Rules 10.5 to 10.10, a *firm* which is an *eligible firm* will be covered in the terms of the *ARP policy* to be issued to it from the start of the relevant *indemnity period* or, in the case of a *firm* to which Rule 10.2 applies, the date specified in the application, being the date specified in accordance with Rule 10.6, until whichever is the earlier of:
- (a) the end of the relevant *indemnity period*; or
  - (b) the date on which the *firm* obtains *qualifying insurance* outside the *ARP*; or
  - (c) the date when the *firm* ceases to be an *eligible firm*.

*Commentary: An eligible firm which should have applied to the ARP before the start of an indemnity period but fails to do so will have breached these Rules by failing to take out a policy from the start of that indemnity period. It may make a later application, but will be liable to pay the ARP default premium for the indemnity period in question. Each principal in an eligible firm which fails to make an application in time commits a disciplinary offence.*

- 10.12 Any *firm* in the *ARP*, and any *person* who is a *principal* of that *firm*, is liable to pay to the *ARP manager* the *ARP premium* in respect of that *firm* within thirty days of such premium being notified to it by the *ARP manager*.

*Commentary: It is a disciplinary offence for a firm and for any principal of that firm to fail to pay the ARP premium (including the ARP run-off premium) to the ARP manager within the required 30 day period. A firm may enter into arrangements with, for example, a premium funding company (whether offered by the ARP manager or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the ARP manager from the premium funding company within the required 30 day period.*

## 11 Special measures

- 11.1 An *eligible firm* that has applied to enter the *ARP* in accordance with the procedure set out in Rule 10 will be issued with an *ARP policy* by the *ARP manager*.

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*Commentary: A copy of the standard-form ARP policy is available on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk) and is also available from the SRA. Contact details appear at the end of the introductory commentary.*

11.2 A *firm* in the ARP must if and to the extent required by the *Council* submit to investigation and monitoring by the *Society* and/or its agents, including investigation and monitoring:

- (a) to determine the reasons why *qualifying insurance* outside the ARP was not obtained;
- (b) to ascertain what *special measures* should be taken by the *firm*.

The *Society's* costs and expenses of the investigation and monitoring and the *Society's* costs and expenses of ascertaining what *special measures* should be taken and of monitoring them shall be met by the *firm* and by any *person* who is a *principal* of that *firm*. The amount of such costs and expenses shall be determined by the *Society* which shall not be required to give any detailed breakdown thereof.

*Commentary: The appointed inspectors (in the first instance, the Forensic Investigations Department of the Inspection & Investigation Directorate) will visit a firm insured through the ARP to carry out investigation and monitoring. This is in order to determine what special measures should be taken and are appropriate for that firm, and to ensure that those measures are fully implemented. It should be noted that the costs and expenses of investigation and monitoring by the Inspection & Investigation Directorate and the implementation of the special measures (together with VAT if applicable) will be payable by the firm concerned (including each principal of that firm), in addition to paying the ARP premium.*

## 12 Time in the ARP

12.1 A *firm* may leave the ARP at any time after it has satisfied the ARP manager that the *firm* has obtained *qualifying insurance* outside the ARP at least until the expiry of the relevant *indemnity period*.

*Commentary: Refer to Appendix 2 to determine whether any return premium will be payable on leaving the ARP.*

12.2 Subject to Rule 12.6, a *firm* may only remain in the ARP so long as it is an *Eligible firm*, or if it becomes a *run-off firm*.

*Commentary: A firm cannot remain insured through the ARP for more than 6 months in any four consecutive indemnity periods (unless it satisfies one of the exceptions to this requirement in the definition of "eligible firm"), and should therefore seek insurance in the open market with a qualifying insurer as soon as practicable. A firm which is no longer an eligible firm (because, for example, it has already been insured through the ARP for 24 months in the last four indemnity periods) must either obtain qualifying insurance on the open market or cease carrying on practice.*

12.3 Subject to Rule 12.6(b), a *firm* in *policy default* at the end of an *indemnity period* shall be deemed to be a *firm in default* for the purposes of Part 4 of these Rules and shall not be an *eligible firm*. This Rule shall not apply in any case where the *Council* is satisfied that there exists a genuine dispute between the *firm* and a *qualifying insurer* or the ARP manager which makes it unreasonable for the *firm* to be deemed to be a *firm in default* pending the resolution of that dispute.

*Commentary: A firm in policy default must remedy that default before the start of an indemnity period if it wishes to obtain insurance through the ARP at any time during that indemnity period. Alternatively, it must either obtain qualifying insurance in the*

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*open market, or cease carrying on practice. If a firm believes that there is a genuine dispute which justifies that firm not being deemed to be a firm in default, it should apply to the SRA as soon as possible before the start of the next indemnity period. Contact details appear at the end of the introductory commentary.*

- 12.4 A firm that is no longer an *eligible firm* must either have *qualifying insurance* outside the ARP or forthwith cease carrying on *practice*.
- 12.5 The *Council* may in its absolute discretion treat a *successor firms* or *successor firms* (or any of them) and the *firm* from which such *successor firm* or *successor firms* were derived as being a single *firm* for the purposes of determining whether the *successor firm* or *successor firms* or any of them are or remain an *eligible firm*.

*Commentary: The purpose of this Rule is to ensure that the time limit on participation in the ARP cannot be avoided by a merger or reconstitution of that firm. A firm which was not previously eligible to join the ARP will not necessarily become an eligible firm by virtue of changes in the composition of a firm. Firms which are unsure about their eligibility following any such change should consult the SRA. Contact details appear at the end of the introductory commentary.*

- 12.6 The *Council* shall have power in any particular case or cases:
- (a) to allow a *firm* to remain in or to re-enter the ARP after any date when the *firm* would otherwise cease to be an *eligible firm*; and
  - (b) to permit a *firm* to be admitted into or remain in or to re-enter the ARP notwithstanding that the *firm* is in *policy default* on such terms and conditions as the *Council* may prescribe including the taking of steps by the *firm* by a specified date or dates to remedy the *policy default*;

and when such power is exercised the *firm* shall continue to be an *eligible firm* for so long as the *Council* may from time to time permit and provided that it complies with any such terms and conditions.

*Commentary: It is envisaged that these powers would be exercised only in exceptional circumstances. Any application seeking the exercise of this power should be made to the SRA at least three months before the firm in question would otherwise cease to be an eligible firm.*

## **PART 4: FIRMS IN DEFAULT**

### **13 Eligibility of firms in default**

- 13.1 At any time during the *period of default* a *firm in default* is entitled to be admitted to the ARP and to be issued with an ARP *policy* in accordance with Rule 13.2, subject to the provisions of this Rule 13.
- 13.2 A *firm in default* is entitled to be admitted to the ARP if:
- (a) it was an *eligible firm* at the start of the *period of default*;
  - (b) had it been admitted to the ARP at the start of the *period of default*, its admission at that time would not have rendered it ineligible to be admitted to the ARP for any part of any subsequent *indemnity period* in which it was in fact admitted to the ARP;
  - (c) it has applied to join the ARP in accordance with Rule 10;

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- (d) the *firm* discharges in full the *ARP default premium* calculated for the whole of the *indemnity period* or *indemnity periods* for which cover is sought within 30 days of such premium being notified to it by the *ARP manager* or such longer period as the *Council* may allow;
  - (e) the *firm* will be subject to and comply with Rules 10.3 (other than Rule 10.3(a)) and 11.2.

*Commentary:* If a firm fails to make an application to the ARP at the start of an indemnity period, and does not have any other policy of qualifying insurance in force for that indemnity period, may still be eligible to be issued with an ARP policy provided that it meets all of the requirements of Rule 13.2. However, each principal of the firm will have committed a disciplinary offence, and the firm and each principal of that firm will be liable to pay the ARP default premium under any ARP policy issued.

13.3 An ARP policy issued under this Rule may afford cover retrospectively from the start of the *period of default* until the earlier of:

- (a) the end of the then current *indemnity period*; or
- (b) the date on which the *firm in default* would have ceased to be an *eligible firm*, ignoring for these purposes any failure to pay the *ARP premium* or the *ARP default premium*; or
- (c) the date on which, had the *firm in default* been admitted to the ARP at the start of the *period of default*, its being covered by the ARP from that time would have first caused it to have been ineligible to be admitted to the ARP for any part of any subsequent *indemnity period* in which it was in fact admitted to the ARP.

13.4 A *run-off firm* shall be entitled at any time following the date on which it first becomes a *run-off firm* to be admitted to the ARP and to be issued with an ARP *run-off policy*, subject to the following conditions:

- (a) the *run-off firm* has made an application to join the ARP in manner provided by Rule 10.5 stating on the proposal form that it is a *run-off firm* and giving the date from which cover under an ARP *run-off policy* is sought;
- (b) the ARP *run-off premium* is discharged in full within thirty days of such premium being notified by the *ARP manager* to the *firm* or such longer period as the *Council* may allow; and
- (c) the *firm*, and any *person* who is a *principal* of that *firm*, will be subject to and comply with Rule 10.3(c).

*Commentary:* A run-off firm will be eligible to be issued with an ARP policy if it meets all of the requirements of Rule 13.4. However, each principal of the firm will have committed a disciplinary offence for failing to make an application to the ARP for run-off cover in accordance with Rule 5.2, and the firm and each principal of the firm will be required to pay the ARP run-off premium under any ARP run-off policy issued.

13.5 An ARP *run-off policy* shall provide run-off cover to a *run-off firm* retrospectively from the date on which it became a *run-off firm* until the end of the day immediately prior to the sixth anniversary of:

- (a) the start of the *indemnity period* in which it became a *run-off firm*; or

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- (b) if applicable, the start of the last *indemnity period*, prior to it becoming a *run-off firm*, in which it both ceased to be an *eligible firm* and was a *firm in default* and continued as such until the date on which it became a *run-off firm*,

whichever is the earlier.

*Commentary:* *Run-off firms which are issued with an ARP run-off policy obtain six years' run-off cover either from the start of the indemnity period in which their practice ceased, or the date on which they ceased to be eligible to apply for an ARP policy while practising uninsured.*

- 13.6 Rule 12.6 shall apply so as to enable the *Council* to extend the period in Rule 13.3(b) for which a *firm in default* may be issued with an *ARP policy*.

*Commentary:* *It is envisaged that this power would be exercised only in exceptional circumstances.*

- 13.7 Any *firm* that has been admitted to the *ARP* under Rule 13.1 shall for the purposes of computing its continuing eligibility to remain in the *ARP* be deemed to have been admitted to the *ARP* at start of the *period of default* and to have remained continuously in the *ARP* until the end of the *indemnity period* current at the date of its application.

- 13.8 Rule 15.2 shall not apply to a *firm* which has under Rule 13 been admitted to the *ARP* and which has been issued with an *ARP policy* or an *ARP run-off policy*, the liability of the *firm* and of any *person* who is a *principal* of that *firm* being limited in those circumstances to the excess payable under the terms of the *policy*.

*Commentary:* *If a firm is eligible to be issued with an ARP policy under Rule 13.1, or an ARP run-off policy under Rule 13.4 then, provided that it complies with the relevant requirements under Rule 13 and is issued with an ARP policy or an ARP run-off policy, the firm and the principals of that firm will be required to pay to the ARP manager only the relevant premium and the excess in the event of any claim.*

## **14 Firms which fail to apply to the ARP**

- 14.1 A *firm in default* which is entitled to be admitted to the *ARP* and to be issued with an *ARP policy* in accordance with Rule 13.1 but which does not make an application to join the *ARP* shall, notwithstanding, be liable, together with any *person* who is a *principal* of that *firm*, to pay to the *Society* an amount equivalent to the *ARP default premium* calculated for the whole of the *period of default*.

- 14.2 A *firm in default* which is entitled to be admitted to the *ARP* and to be issued with an *ARP run-off policy* in accordance with Rules 13.4 and 13.5 but which does not make an application to join the *ARP* shall, notwithstanding, be liable, together with any *person* who is a *principal* of that *firm*, to pay to the *Society* an amount equivalent to the *ARP run-off premium* calculated for the whole of the period equivalent to that which would be provided by an *ARP run-off policy* in accordance with Rule 13.5, or, if shorter and if it can be ascertained, the *period of default*.

- 14.3 Any amount payable in accordance with Rules 14.1 or 14.2 shall be determined by the *ARP manager* on the basis of such assumption as to the *firm's* gross fees and other matters as the *ARP manager* shall in its absolute discretion determine, and may be reviewed from time to time by the *ARP manager* in its absolute discretion on the basis of any further information provided to it. Any such amount paid under Rule 14.1 or 14.2 shall be deducted from any amount payable pursuant to Rule 15.2. The *ARP manager* may and is hereby authorised to recover all sums due under Rules 14.1 or 14.2 on behalf of the *Society*.

*Commentary:* *If a firm fails to make an application to the ARP, but carries on practice without having obtained qualifying insurance, each principal in that firm will have committed a disciplinary offence. The same is true if a run-off firm fails to apply*

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*to be issued with an ARP run-off policy. In each case, that firm, and each principal in that firm, will also be liable under these Rules to:*

- *pay an amount to the Society equivalent to the ARP default premium calculated for the whole of the period of default; and*
- *reimburse to the Society in full under Rule 15 the amount of any claim (together with defence costs) made against the firm and relating to the period when it did not have qualifying insurance in force, less any amount due under this Rule.*

## **15 Arrangements in relation to uninsured firms**

15.1 The *ARP manager* on behalf of the *Society* shall make arrangements with *qualifying insurers* to cover any *claim* against:

- (a) a *firm in default*; and
- (b) a *run-off firm*

including any *defence costs* relating to a *claim*, in like manner and to the like extent as the *claim* and the *defence costs* would have been covered had that *firm* during the *period of default* been in the *ARP* and been issued with an *ARP policy* and/or, as the case may require, an *ARP run-off policy*.

15.2 Subject to Rule 13.8, Rule 14.1 and Rule 14.2, the *Society* on behalf of *qualifying insurers* shall be entitled to recover from each and every *principal* in the *firm in default* during the *period of default* all amounts paid in or towards the discharge of a *claim* and *defence costs* pursuant to Rule 15 together with interest thereon at Barclays Bank Plc base rate plus three per cent from the date when such amounts were respectively paid. The *ARP manager* may and is hereby authorised to recover all sums due under this Rule on behalf of the *Society*.

15.3 A *firm* shall not be deemed to have been admitted to the *ARP* or to be covered in accordance with Rule 15 solely by virtue of the fact that the *ARP manager* may conduct or settle any claim made against that *firm* under the terms of any agreement between the *Society* and any *qualifying insurer*.

*Commentary: If a firm fails to make an application to the ARP, but carries on practice without having obtained qualifying insurance, each principal in that firm will have committed a disciplinary offence. The same is true if a run-off firm fails to apply to be issued with an ARP run-off policy. In each case, that firm, and each principal in that firm, will also be liable under these Rules to:*

- *reimburse to the Society in full the amount paid pursuant to Rule 15.1 in respect of any claim (together with defence costs) made against the firm and relating to the period when it did not have qualifying insurance in force, less any amount due under Rule 14 (where applicable); and*
- *pay an amount under Rule 14 (where applicable) to the Society equivalent to the ARP default premium calculated for the whole of the period of default.*

*However, if a firm in these circumstances is eligible under Rule 13.1 to be issued with an ARP policy, then, provided that it complies with Rule 13.1 and is issued with an ARP policy, the liability of the firm and the principals of that firm will be limited, from that point on, to the ARP default premium and the excess payable under the terms of the ARP policy.*

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## PART 5: DISCIPLINARY OFFENCES AND REPORTING

### 16 Disciplinary consequences of failure to comply with these Rules

- 16.1 The provisions in Part 4 of the Rules are made without prejudice to the powers of the *Council* or the *Society* under the *SA*, the *AJA*, the Courts and Legal Services Act 1990, the European Communities (Lawyer's Practice) Regulations 2000 or the *LSA*, or rules made under any of them, to bring disciplinary proceedings or take disciplinary action against any *firm* that has failed to comply with these Rules or any *person* who is or was a *principal* in such a *firm* or to intervene in a *practice* carried on by such a *firm*.

*Commentary:* *Payment of the ARP default premium and/or the ARP run-off premium does not detract from the fact that the firm in question, and each principal of that firm, has committed a breach of these Rules as a result of the firm being a firm in default. If a firm in default is not an eligible firm, it must either obtain qualifying insurance in the open market, or cease carrying on practice and make an application to the ARP for run-off cover in accordance with Rule 5.2.*

- 16.2 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any *firm* or any *person* who is at the relevant time a *principal* in a *firm* to be in *policy default*, or to fail to implement any *special measures* to the satisfaction of the *Society*.

*Commentary:* *Policy default and special measures are defined in Rule 3.1. Note that a firm that is carrying on a practice while in policy default will also not be an eligible firm for the purpose of seeking further cover through the ARP.*

### 17 Use of information

- 17.1 Any *qualifying insurer* (including the *ARP manager*) shall, in relation to any *firm* which applies to it for *qualifying insurance*, and in the case of the *ARP manager* any *run-off firm* or *firm in default*, whether or not that *firm* applies to enter the *ARP*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:

- (a) any failure on the part of the *firm* or any *person* who is a *principal* of that *firm* to pay any sum, including an *ARP premium*, *ARP default premium* or *ARP run-off premium*, on or before the date specified in these Rules or to reimburse any amount falling within a *policy excess* which has been paid out by a *qualifying insurer* to a claimant;
- (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
- (c) the fact that the *firm* has become or is believed to have become a *run-off firm*;
- (d) any matter or circumstances that would entitle the *firm's qualifying insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
- (e) any dishonesty or fraud suspected by a *qualifying insurer* on the part of any *insured*; and
- (f) any claim of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

*Commentary:* *All firms, whether they obtain their qualifying insurance on the open market or through the ARP, or whether, having failed to obtain qualifying insurance, they are subject to the provisions of Part 4 of these Rules, are deemed to have consented to their qualifying insurer or the ARP manager bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be*



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*applicable to the Firm. Any such information is subject to the confidentiality provisions of Rule 17.3.*

- 17.2 The *Council* may require any *qualifying insurer* or the *ARP manager* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.
- 17.3 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1 and 17.2:
- (a) the *Society* shall keep all such information confidential;
  - (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the *Society* or any of its subsidiaries; and
  - (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.
- 17.4 The provisions of Rule 17.3 shall not prevent the *Society* from:
- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any *person*; or
  - (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any *person* entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the Legal Ombudsman).
- 17.5 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's qualifying insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

## **18 Details of qualifying insurer**

- 18.1 If a *claimant* asserts a claim against a *firm* or any *person* insured under that *firm's policy*, and where such *claim* relates to any matter within the scope of cover of the *MTC* (whether or not such *claim* would or may be upheld), the *firm* and any *person* who is at the relevant time (or, in the case of a *firm* which has ceased *practice*, any *person* who was immediately before that *firm* ceased *practice*) a *principal* in that *firm* shall be required, upon being so requested by that *claimant*, by any *person* insured under that *firm's policy*, or by any other *person* with a legitimate interest, to provide to that *person* the following details in relation to that *firm's policy*:
- (a) the name of the *qualifying insurer(s)* who issued the policy; and
  - (b) the policy number; and
  - (c) the address and contact details of the *qualifying insurer(s)* for the purpose of making a claim under the policy;

in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *firm* or *person* against whom the *claim* is asserted is covered by *supplementary run-off cover*.

*Commentary:* A *firm*, and each *principal* in that *firm*, is required to provide details of that *firm's policy* of *qualifying insurance* to any *person* who asserts a claim against anyone

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*insured under that firm's policy. Under Rule 17, the SRA has the power to disclose information regarding a firm's qualifying insurer where it considers it appropriate to do so.*

## **PART 6: GENERAL POWERS OF THE COUNCIL**

### **19 Waiver powers**

- 19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.
- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 must be made in writing to the Society as soon as reasonably practicable.
  - (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the Society as soon as reasonably practicable and in any event no later than 28 February 2002.
  - (c) Any appeal against any decision made by the Society in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011) must be made in writing to the Society within 21 days from the date of the decision.
  - (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the Society in respect of such application shall not relieve any *person* from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 pending the determination of any such application or appeal.

*Commentary: It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.*

- 19.2 The Council shall have power to treat any *firm* as complying with any Rule or Rules for the purposes of the SA notwithstanding that the *firm* has failed to comply with a Rule or Rules where such non-compliance is regarded by the *Council* in a particular case or cases as being insignificant.
- 19.3 For the purposes of the SA (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

*Commentary: The effect of this general power is that, for example, a practising certificate may be issued to a person notwithstanding a technical and insignificant breach by that person or a firm of any provision of these Rules.*

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## PART 7: OTHER OBLIGATIONS

### 20 Accountants' reports

Any accountant's report which a solicitor or *REL* or registered foreign lawyer who is a *principal* in a *practice* or a *recognised body* or a *licensed body* is required to deliver to the *Society* under section 34 of the *SA* or paragraph 8 of Schedule 14 to the Courts and Legal Services Act 1990 or under section 83(5)(h) of and paragraph 20 of Schedule 11 to the *LSA* containing such information as is prescribed by rule 35 of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the SRA Accounts Rules) which replace the Solicitors' Accounts Rules 1998 in whole or in part, must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) either that the *firm* has one or more certificates of *qualifying insurance* outside the *ARP* or that the *firm* has been issued with one or more policies by the *ARP manager*.

*Commentary:* *Firms are required to provide evidence to their accountants that a policy of qualifying insurance is in place. Each qualifying insurer is required under the qualifying insurer's agreement to provide a certificate of qualifying insurance to each firm within 20 working days of the start of the period covered by the policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.*

## Appendix 1

### SRA Minimum Terms and Conditions of Professional Indemnity Insurance

#### 1 Scope of cover

##### 1.1 Civil liability

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, provided that a *claim* in respect of such liability:

- (a) is first made against an *insured* during the *period of insurance*; or
- (b) is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.2 Defence costs

The insurance must also indemnify the *insured* against *defence costs* in relation to:

- (a) any *claim* referred to in clause 1.1, 1.4 or 1.6; or
- (b) any *circumstances* first notified to the *insurer* during the *period of insurance*; or
- (c) any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of the *Society* (including, without limitation, the *SRA* and the *Tribunal*)) during or after the *period of insurance* arising from any *claim* referred to in clause 1.1, 1.4 or 1.6 or from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.3 The insured

For the purposes of the cover contemplated by clause 1.1, the *insured* must include:

- (a) the *insured firm*; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant *circumstances* by the *insured firm* and/or the *principals* of the *insured firm*; and
- (c) each *principal*, each former *principal* and each person who becomes a *principal* during the *period of insurance* of the *insured firm* or a company referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each person who becomes during the *period of insurance* an *employee* of the *insured firm* or a company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated person referred to in paragraph (c) or (d).

##### 1.4 Prior practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *prior practice*, provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

### 1.5 The insured - prior practice

For the purposes of the cover contemplated by clause 1.4, the *insured* must include:

- (a) each *partnership* or *recognised body* which, or *sole practitioner* who, carried on the *prior practice*; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant circumstances by the *partnership* or *recognised body* which, or *sole practitioner* who, carried on the *prior practice* and/or the *principals* of such *partnership* or *recognised body*; and
- (c) each *principal* and former *principal* of each *partnership* or *recognised body* referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each *employee* and former *employee* of the *partnership*, *recognised body* or *sole practitioner* referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or person referred to in paragraph (c) or (d).

### 1.6 Successor practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *successor practice* to the *insured firm's practice* (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*

unless run-off cover is provided in accordance with clause 5.3.

### 1.7 The insured - successor practice

For the purposes of the cover contemplated by clause 1.6, the *insured* must include:

- (a) each *partnership* or *recognised body* which, or *sole practitioner* who, carries on the *successor practice* during the *period of insurance*; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant *circumstances* by the *partnership* or *recognised body* which, or *sole practitioner* who, carries on the *successor practice* and/or the *principals* of such *partnership* or *recognised body*; and
- (c) each *principal*, each former *principal* and each person who becomes during the *period of insurance* a *principal* of any *partnership* or *recognised body* referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each person who becomes during the *period of insurance* an *employee* of the *partnership*, *recognised body* or *sole practitioner* referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## **1.8 Award by regulatory authority**

The insurance must indemnify each *insured* against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman, the Office for Legal Complaints (including the *Legal Ombudsman* pursuant to section 137(2)(c) and section 137(4)(b) of the *LSA*) or any other regulatory authority to the same extent as it indemnifies the *insured* against civil liability provided that the *insurer* will have no liability in respect of any determination by the *Legal Ombudsman* pursuant to section 137(2)(b) of the *LSA* to refund any fees paid to the *insured*.

## **2 Limit of insurance cover**

### **2.1 Any one claim**

The *sum insured* for any one *claim* (exclusive of *defence costs*) must be, where the *insured firm* is a *relevant recognised body*, at least £3 million, and in all other cases, at least £2 million.

### **2.2 No limit on defence costs**

There must be no monetary limit on the cover for *defence costs*.

### **2.3 Proportionate limit on defence costs**

Notwithstanding clauses 2.1 and 2.2, the insurance may provide that liability for *defence costs* in relation to a *claim* which exceeds the *sum insured* is limited to the proportion that the *sum insured* bears to the total amount paid or payable to dispose of the *claim*.

### **2.4 No other limit**

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 and 2.3.

### **2.5 One claim**

The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 2.1 and 2.3:

(a) all *claims* against any one or more *insured* arising from:

- (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactions
- and

(b) all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

### **2.6 Multiple underwriters**

2.6.1 The insurance may be underwritten by more than one *insurer*, each of which must be a *qualifying insurer*, provided that the insurance may provide that the *insurer* shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance.

2.6.2 Where the insurance is underwritten jointly by more than one *insurer*:

- (a) the insurance must state which *qualifying insurer* shall be the *lead insurer*, and
- (b) in addition to any proportionate limit on *defence costs* in accordance with clause 2.3, the insurance may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.

**[Note: under clause 2.6 of the qualifying insurer's agreement, a policy may be issued on an excess of loss basis only in the layers set out in that clause.]**

### **3 Excesses**

#### **3.1 The excess**

The insurance may be subject to an *excess* of such monetary amount and on such terms as the *insurer* and the *insured firm* agree. Subject to clause 3.4, the *excess* may be 'self-insured' or partly or wholly insured without regard to these *MTC*.

#### **3.2 No deductibles**

The insurance must provide that the *excess* does not reduce the limit of liability contemplated by clause 2.1.

#### **3.3 Excess not to apply to defence costs**

The *excess* must not apply to *defence costs*.

#### **3.4 Funding of the excess**

The insurance must provide that, if an *insured* fails to pay to a *claimant* any amount which is within the *excess* within 30 days of it becoming due for payment, the *claimant* may give notice of the *insured's* default to the *insurer*, whereupon the *insurer* is liable to remedy the default on the *insured's* behalf. The insurance may provide that any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.

#### **3.5 One claim**

The insurance may provide for multiple *claims* to be treated as one *claim* for the purposes of an *excess* contemplated by clause 3.1 on such terms as the *insured firm* and the *insurer* agree.

#### **3.6 Excess layers**

In the case of insurance written on an *excess of loss* basis, there shall be no *excess* except in relation to the primary layer.

### **4 Special conditions**

#### **4.1 No avoidance or repudiation**

The insurance must provide that the *insurer* is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

#### **4.2 No adjustment or denial**

The insurance must provide that the *insurer* is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

#### 4.3 No cancellation

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the *insured firm* and the *insurer*, and in any event only in circumstances where:

- (a) the *insured firm's practice* is merged into a *successor practice*, provided that there is insurance complying with these *MTC* in relation to that *successor practice*, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance, complying with the minimum terms and conditions in effect at its commencement, commences, but only where, in the case of insurance not provided wholly or partly by the *ARP*, the replacement insurance is not provided wholly or partly by the *ARP*, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the *insured firm* is not required under the *SIIR* to effect a policy of *qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *indemnity period* and (b) the date on which the *insured firm* ceased to be required to effect a policy of *qualifying insurance*, or such later date as the *insured firm* and the *insurer* may agree; or
- (d) in the case of an *ARP policy*, it subsequently transpires that the *insured firm* was not or has ceased to be an *eligible firm*, in which case cancellation shall have effect from the date on which it ceased to be an *eligible firm*.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

#### 4.4 No set-off

The insurance must provide that any amount payable by the *insurer* to indemnify an *insured* against civil liability to a *claimant* will be paid only to the *claimant*, or at the *claimant's* direction, and that the *insurer* is not entitled to set-off against any such amount any payment due to it by any *insured* including, without limitation, any payment of premium or to reimburse the *insurer*.

#### 4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clause 6.1. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.

#### 4.6 No retroactive date

The insurance must not exclude or limit the liability of the *insurer* in respect of *claims* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

#### 4.7 Successor practice - 'double insurance'

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more insurers of the *successor practice*, contribution between insurers is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.



#### **4.8 Advancement of defence costs**

The insurance must provide that the *insurer* will meet *defence costs* as and when they are incurred, including *defence costs* incurred on behalf of an *insured* who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the *insurer* is not liable for *defence costs* incurred on behalf of that *insured* after the earlier of:

- (a) that *insured* admitting to the *insurer* the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that *insured* was in fact guilty of such dishonesty, act or omission.

#### **4.9 Resolution of disputes**

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.3, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer.

#### **4.10 Conduct of a claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim*. If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### **4.11 Minimum terms and conditions to prevail**

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these *MTC*; and
- (b) any provision which is inconsistent with these *MTC* is to be severed or rectified to comply.

#### **4.12 Period of insurance**

The *period of insurance* must not expire prior to 30 September 2012.

## **5 Run-off cover**

### **5.1 Cessation of the insured firm's practice**

The insurance must provide run-off cover in the event of a *cessation*. For these purposes, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*.

### **5.2 Scope of run-off cover**

The run-off cover referred to in clause 5.1 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but subject to the limits, exclusions and conditions of the insurance which are in accordance with these *MTC*) on the basis that the *period of insurance* extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended).

### **5.3 Succession**

The insurance must provide that, if there is a *successor practice* to the ceased *practice*, the *insured firm* may elect before its *cessation*, whether it wishes the ceased *practice*:

- (a) to be insured under the run-off cover referred to in clause 5.1; or
- (b) provided that there is insurance complying with these *MTC* in relation to that *successor practice*, to be insured as a *prior practice* under such insurance.

If the *insured firm* fails to make an election and/or fails to pay any premium due under the terms of the *policy*, before its *cessation*, clause 5.3(b) above shall apply.

The insurance must also provide that where an *insured firm* makes an election pursuant to this clause 5.3, the *insurer* shall give notice to the *Society* in writing of the election not later than seven days following the receipt by the *insurer* of the *insured firm's* election and that election has become effective and the *insured firm* shall irrevocably consent to that notification.

### **5.4 Suspended practices**

The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the *insured firm's practice* restarts, the *insurer* may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;
- (b) the *qualifying insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
  - (i) it is providing insurance complying with these *MTC* in relation to that *insured firm* for the then current *indemnity period*; and
  - (ii) it is doing so on the basis that the *insured firm's practice* is regarded as being a continuation of the *insured firm's practice* prior to *cessation* and that accordingly it is liable for *claims* against the *insured firm* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to *cessation*.

## **6 Exclusions**

The insurance must not exclude or limit the liability of the *insurer* except to the extent that any *claim* or related *defence costs* arise from the matters set out in this clause 6.

**6.1 Prior cover**

Any *claim* in respect of which the *insured* is entitled to be indemnified by the *SIF* or under a professional indemnity insurance contract for a period earlier than the *period of insurance*, whether by reason of notification of *circumstances* to *SIF* or under the earlier contract or otherwise.

**6.2 Death or bodily injury**

Any liability of any *insured* for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

**6.3 Property damage**

Any liability of any *insured* for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any *insured* in connection with the *insured firm's practice* and not occupied or used in the course of the *insured firm's practice*), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

**6.4 Partnership disputes**

Any actual or alleged breach of the *insured firm's partnership* or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *insured firm* is an *LLP* or a company without a share capital.

**6.5 Employment breaches, discrimination, etc.**

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any *partnership* or shareholder agreement or arrangement or the equivalent where the *insured firm* is an *LLP* or a company without a share capital, or in relation to any employment or training agreement or arrangement.

**6.6 Debts and trading liabilities**

Any:

- (a) trading or personal debt of any *insured*; or
- (b) legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or
- (c) guarantee, indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

**6.7 Fines, penalties, etc**

Any:

- (a) fine or penalty; or

- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any *insured*.

## **6.8 Fraud or dishonesty**

The insurance may exclude liability of the *insurer* to indemnify any particular person to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that person, except that:

- (a) the insurance must nonetheless cover each other *insured*; and
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*.

## **6.9 Directors' or officers' liability**

The insurance may exclude liability of the *insurer* to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a *recognised body* or a service, administration, *trustee* or nominee company referred to in clauses 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) the insurance must nonetheless cover any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

## **6.10 War and terrorism, and asbestos**

The insurance may exclude, by way of an exclusion or endorsement, liability of the *insurer* to indemnify any *insured* in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against civil liability or related *defence costs* arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the *insured firm's practice* or to the conduct of *private legal practice*.

## **7 General conditions**

### **7.1 As agreed**

The insurance may contain such general conditions as are agreed between the *insurer* and the *insured firm*, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

## **7.2 Reimbursement**

The insurance may provide that each *insured* who:

- (a) committed; or
- (b) condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of the insurance; or
  - (iii) dishonesty or any fraudulent act or omission,

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by the *Society*, or in the *Society* publication *Your Clients - Your Business*, as amended from time to time.

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*. The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any person referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such person if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

## **7.3 Reimbursement of defence costs**

The insurance may provide that each *insured* will reimburse the *insurer* for *defence costs* advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.

## **7.4 Reimbursement of the excess**

The insurance may provide for those persons who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any person held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an *insured's* behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

## **7.5 Reimbursement of moneys paid pending dispute resolution**

The insurance may provide that each *insured* will reimburse the *insurer* following resolution of any coverage dispute for any amount paid by the *insurer* on that *insured's* behalf which, on the basis of the resolution of the dispute, the *insurer* is not ultimately liable to pay.

## **7.6 Withholding assets or entitlements**

The insurance may require the *insured firm* to account to the *insurer* for any asset or entitlement of any person who committed or condoned any dishonesty or fraudulent act or omission, provided that the *insured firm* is legally entitled to withhold that asset or entitlement from that person.

## **7.7 Premium**

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work

performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

## 7.8 Co-operation and assistance

The insurance (except in the case of an *ARP policy*) must provide that, if the *ARP manager* is appointed to conduct any *claim*, each *insured* will give the *ARP manager* and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible *claim* or any related proceeding.

## 8 Definitions and interpretation

### 8.1 General

8.1.1 In these *MTC*, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) the male gender includes the female and neuter genders;
- (c) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons;
- (d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the date of these *MTC*;
- (e) references to the *Society* include the *SRA* and any body or person which succeeds in whole or in part to the functions of the *Society* or the *SRA* and any delegate of the *Society*, the *SRA* or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of these *MTC*;
- (g) explanatory notes and commentary shall be ignored in interpreting these *MTC*;
- (h) a reference to a director includes a member of an *LLP*;
- (i) words and expressions which appear in italics in these *MTC* have the meaning set out in this paragraph 8 or, if not defined in this Appendix but defined in Rule 3 of the *SRA Indemnity Rules 2011*, the meaning given in that Rule; and
- (j) words and expressions in these *MTC* are to be construed consistently with the same or similar words or expressions in the *SIIR*.

8.1.2 These *MTC* shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.

### 8.2 Defined terms

In these *MTC*:

**cessation** means where the *insured firm's practice* ceases during or on expiry of the *period of insurance* and the *insured firm* has not obtained succeeding insurance in compliance with the *MTC*.

**circumstances** means an incident, occurrence, fact, matter, act or omission which may give rise to a *claim* in respect of civil liability.

**claim** means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an *insured firm* and/or any *insured* to remedy a breach of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the *SRA Accounts Rules*) which replace the Solicitors' Accounts Rules 1998 in whole or in part, shall be treated as a *claim*, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1, whether or not any *person* makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the SA) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the *insured firm* or the failure of such bank or building society generally to repay monies on demand.

**claimant** means a *person* or entity which has made or may make a *claim* including a *claim* for contribution or indemnity.

**defence costs** means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the *insurer* in:

- (a) defending any proceedings relating to a *claim*; or
- (b) conducting any proceedings for indemnity, contribution or recovery relating to a *claim*; or
- (c) investigating, reducing, avoiding or compromising any actual or potential *claim*; or
- (d) acting for any *insured* in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of the *Society* (including, without limitation, the *SRA* and the *Tribunal*)).

Defence costs do not include any internal or overhead expenses of the *insured firm* or the *insurer* or the cost of any *insured's* time.

**employee** means any person other than a *principal*:

- (a) employed or otherwise engaged in the *insured firm's practice* (including under a contract for services) including, without limitation, as a *solicitor*, lawyer, trainee *solicitor* or *lawyer*, consultant, *associate*, locum tenens, agent, appointed person (as defined in the *SRA Indemnity Insurance Rules 2011*), office or clerical staff member or otherwise;
- (b) seconded to work in the *insured firm's practice*; or
- (c) seconded by the *insured firm* to work elsewhere;

but does not include any person who is engaged by the *insured firm* under a contract for services in respect of any work where that person is required, whether under the *SRA Indemnity Insurance Rules 2011* or under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

**excess** means the first amount of a *claim* which is not covered by the insurance.

**insured** means each person and entity named or described as a person to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 and, in relation to *prior practices* and *successor practices* respectively, those referred to in clauses 1.5 and 1.7.

**insured firm** means the *firm* (as defined for the purposes of the *SRA Indemnity Insurance Rules 2011*) which contracted with the *insurer* to provide the insurance.

**insured firm's practice** means:

- (a) the legal *practice* carried on by the *insured firm* as at the commencement of the *period of insurance*; and
- (b) the continuous legal *practice* preceding and succeeding the *practice* referred to in paragraph (a) (irrespective of changes in ownership of the *practice* or in the composition of any *partnership* which owns or owned the *practice*).

**insurer** means the underwriter(s) of the insurance.

**lead insurer** means the insurer named as such in the contract of insurance, or, if no lead insurer is named as such, the first-named insurer on the relevant certificate of insurance.

**LLP** means a limited liability partnership incorporated under the Limited Liability Partnership Act 2000.

**partner** means a person who is or is held out to be a partner in a *partnership*.

**partnership** means an unincorporated *insured firm* in which persons are or are held out as *partners* and does not include an *insured firm* incorporated as an *LLP*.

**period of insurance** means the period for which the insurance operates.

**principal** means:

- (a) where the *insured firm* is or was:
  - (i) a *sole practitioner* - that practitioner;
  - (ii) a *partnership* - each *partner*;
  - (iii) a *company* with a share capital - each *director* of that *company* and any person who:
    - (A) is held out as a *director*; or
    - (B) beneficially owns the whole or any part of a share in the *company*; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the *company*;
  - (iv) a *company* without a share capital – each *director* of that *company* and person who:
    - (A) is held out as a *director*; or
    - (B) is a *member* of the *company*; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a *member* of the *company*;
  - (v) an *LLP* – each *member* of that *LLP*, and any person who is the ultimate owner of the whole or any part of a body corporate or other legal person which is a *member* of the *LLP*;
- (b) where a *body corporate* or other legal person is a *partner* in the *insured firm*, any person who is within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph (a)(v) of this definition.



**prior practice** means each *practice* to which the *insured firm's practice* is ultimately a *successor practice* by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such *practice* which has elected to be insured under run-off cover in accordance with clause 5.3(a) of these *MTC*.

**private legal practice** means the provision of services in private *practice* as a *solicitor* or *REL* including, without limitation:

- (a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a *partnership* permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007 or by the SRA Practice Framework Rules 2011; and
- (b) the provision of such services as a secondee of the *insured firm*; and
- (c) any *insured* acting as a personal representative, *trustee*, attorney, notary, insolvency practitioner or in any other role in conjunction with a *practice*; and
- (d) the provision of such services by any *employee*; and
- (e) the provision of such services pro bono publico.

*private legal practice* does not include:

- (i) practising as an *employee* of an employer other than a *solicitor*, a *REL*, a *partnership* permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007 or by the SRA Practice Framework Rules 2011, a *recognised body* or a *licensed body* (in respect of its *regulated activities*); or
- (ii) discharging the functions of any of the following offices or appointments:
  - (A) judicial office;
  - (B) Under Sheriffs;
  - (C) members and clerks of such tribunals, committees, panels and boards as the *Council* may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (D) Justices' Clerks; or
  - (E) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

**recognised body** means a body for the time being recognised by the *SRA* under Section 9 of the *AJA*.

**relevant recognised body** means a *recognised body* other than:

- (a) an unlimited company, or an overseas company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (b) a nominee company only, holding assets for clients of another *practice*; and
  - (i) it can act only as agent for the other *practice*; and
  - (ii) all the individuals who are *principals* of the *recognised body* are also *principals* of the other *practice*; and

- (iii) any fee or other income arising out of the *recognised body* accrues to the benefit of the other *practice*; or
- (c) a *partnership* in which none of the *partners* is a limited company, an *LLP* or a legal person whose members have limited liability; or
- (d) a *sole practitioner* that is a *recognised body*.

**sole practitioner** means a *solicitor* or *REL* practising as a sole *principal* but does not include a *solicitor* or *REL* practising in-house.

**successor practice** means a *practice* identified in this definition as 'B', where:

- (a) 'A' is the *practice* to which B succeeds; and
- (b) 'A's owner' is the owner of A immediately prior to transition; and
- (c) 'B's owner' is the owner of B immediately following transition; and
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal *practice*.

B is a successor practice to A where:

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
- (ii) (where A's owner was a *sole practitioner* and the transition occurred on or before 31 August 2000) - the *sole practitioner* is a *principal* of B's owner; and/or
- (iii) (where A's owner was a *sole practitioner* and the transition occurred on or after 1 September 2000) - the *sole practitioner* is a *principal* or *employee* of B's owner; and/or
- (iv) (where A's owner was a *recognised body*) - that body is a *principal* of B's owner; and/or
- (v) (where A's owner was a *partnership*) - the majority of the *principals* of A's owner have become *principals* of B's owner; and/or
- (vi) (where A's owner was a *partnership* and the majority of *principals* of A's owner did not become *principals* of the owner of another legal *practice* as a result of the transition) - one or more of the *principals* of A's owner have become *principals* of B's owner and:
  - (A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
  - (B) B is carried on from the same premises as A; and/or
  - (C) the owner of B acquired the goodwill and/or assets of A; and/or
  - (D) the owner of B assumed the liabilities of A; and/or
  - (E) the majority of staff employed by A's owner became *employees* of B's owner.

Notwithstanding the foregoing, B is not a successor practice to A under paragraph (ii), (iii), (iv), (v) or (vi) if another *practice* is or was held out by the owner of that other *practice* as the successor of A or as incorporating A, provided that there is insurance complying with these *MTC* in relation to that other *practice*.

***sum insured*** means the aggregate limit of liability of each *insurer* under the insurance.

***the Tribunal*** means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the SA.

## Appendix 2

### Rating schedule for 2011/2012

#### 1 Method for calculation of the ARP premium

1.1 The annual *ARP premium* is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the *insured firm*. For a £2 million primary policy (£3 million in the case of *relevant recognised bodies*), where the Gross Fees are £500,000 or less, the annual *ARP premium* is calculated at a rate of 27½% of the fees declared (30% in the case of *relevant recognised bodies*). Where the Gross Fees of the *insured firm* are £500,001 or more, the annual *ARP premium* is the sum of:

- the maximum premium for the previous fee band; plus
- the marginal rate on Fees applied to the amount of fees that exceed the ceiling of the previous fee band.

There is a minimum premium of £1,500 irrespective of the level of Gross Fees, or the period of time spent in the *ARP* during an *indemnity period*.

#### 1.2 Firms other than relevant recognised bodies (£2 million indemnity limit)

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	27.5%	$27.5\% \times £500,000 = £137,500$	£137,500	27.50%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	22%	£137,500 (maximum premium for fee band 1) plus $22\% \times £1,000,000 = £220,000 = £357,000$ <i>£137,500 plus (22% x £500,000 = £110,000) = £247,500</i>	£357,000	23.826%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	16.5%	$16.5\% \times £1,500,000 = £247,500$ plus £357,000 (maximum premium for fee band 2) = £605,000 <i>£357,000 plus (16.5% x £750,000 = £123,750) = £481,250</i>	£605,000	20.163%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	13.2%	$13.2\% \times £2,000,000 = £264,000$ plus £605,000 (maximum premium for fee band 3) = £869,000 <i>£605,000 plus (13.2% x £1,000,000 = £132,000) = £737,000</i>	£869,000	17.38%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	11%	$11\% \times £15,000,000 = £1,650,000$ plus £869,000 (maximum premium for fee band 4) = £2,519,000 <i>£869,000 plus (11% x £5,000,000 = £550,000) = £1,419,000</i>	£2,519,000	12.595%
6 £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	5.5%	$5.5\% \times (\text{actual fees} - £20,000,000)$ plus £2,519,000 (maximum premium for fee band 5) = (annual premium) <i>£2,519,000 plus (5.5% x £10,000,000) = £550,000 = £3,069,000</i> <i>£2,519,000 plus (5.5% x £30,000,000 = £1,650,000) = £4,169,000</i>	—	—

#### 1.3 Relevant recognised bodies (£3 million indemnity limit)

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	24%	£150,000 (maximum premium for fee band 1) plus $24\% \times £1,000,000 = £200,000 = £390,000$ <i>£150,000 plus (24% x £500,000 = £120,000) = £270,000</i>	£390,000	25.992%

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
<b>3</b> £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	18%	18% x £1,500,000 = £270,000 plus £390,000 (maximum premium for fee band 2) = £660,000 <i>£390,000 plus (18% x £750,000 = £135,000) = £525,000</i>	£660,000	24.196%
<b>4</b> £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	14.4%	14.4% x £2,000,000 = £288,000 plus £660,000 (maximum premium for fee band 3) = £948,000 <i>£660,000 plus (14.4% x £1,000,000 = £144,000) = £804,000</i>	£948,000	18.96%
<b>5</b> £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	12%	12% x £15,000,000 = £1,800,000 plus £948,000 (maximum premium for fee band 4) = £2,748,000 <i>£948,000 plus (12% x £5,000,000 = £600,000) = £1,548,000</i>	£2,748,000	13.74%
<b>6</b> £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	6%	6% x (actual fees – £20,000,000) plus £2,748,000 (maximum premium for fee band 5) = (annual premium) <i>£2,748,000 plus (6% x £10,000,000) = £600,000 = £3,348,000</i> <i>£2,748,000 plus (6% x £30,000,000 = £1,800,000) = £4,548,000</i>	—	—

#### 1.4 Primary layer rates

Where an *ARP policy* is written as a primary layer of £1 million, with excess layer(s) provided by a *qualifying insurer*, the annual premium due to the *ARP* in respect of that policy shall be an amount calculated in accordance with the table below:

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
<b>1</b> £0 to £500,000	25%	25% x £500,000 = £125,000	£125,000	25.00%
<b>2</b> £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	20%	£125,000 (maximum premium for fee band 1) plus 20% x £1,000,000 = £200,000 = £325,000 <i>£125,000 plus (20% x £500,000 = £100,000) = £225,000</i>	£325,000	21.66%
<b>3</b> £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	15%	15% x £1,500,000 = £225,000 plus £325,000 (maximum premium for fee band 2) = £550,000 <i>£325,000 plus (15% x £750,000 = £112,500) = £437,500</i>	£550,000	18.33%
<b>4</b> £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	12%	12% x £2,000,000 = £240,000 plus £550,000 (maximum premium for fee band 3) = £790,000 <i>£550,000 plus (12% x £1,000,000 = £120,000) = £670,000</i>	£790,000	15.80%
<b>5</b> £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	10%	10% x £15,000,000 = £1,500,000 plus £790,000 (maximum premium for fee band 4) = £2,290,000 <i>£790,000 plus (10% x £5,000,000 = £500,000) = £1,290,000</i>	£2,290,000	11.45%
<b>6</b> £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	5%	5% x (actual fees – £20,000,000) plus £2,290,000 (maximum premium for fee band 5) = (annual premium) <i>£2,290,000 plus (5% x £10,000,000) = £500,000 = £2,790,000</i> <i>£2,290,000 plus (5% x £30,000,000 = £1,500,000) = £3,790,000</i>	—	—

## 1.5 Excess layer rates

Where an *ARP policy* is written as an excess layer and the primary layer is provided by a *qualifying insurer*, the annual premium due to the *ARP* in respect of that policy shall be an amount equal to the percentage set out below of the primary layer rate calculated in accordance with the table above:

Excess layer	Percentage of primary layer rate
£1 million excess of £1 million (or any part thereof)	10%
£2 million excess of £1 million (or any part thereof)	20%
£1 million excess of £2 million (or any part thereof)	10%

## 1.6 Co-insurance

Where an *ARP policy* is written as co-insurance, on the basis that one or more other *qualifying insurers* are liable in respect of a proportion only of the *sum insured*, the premium due to the *ARP* in respect of that policy shall be an amount equal to  $T \times P$ , where:

**T** = the total annual premium (including any default charge in accordance with Part 2) that would have been due to the *ARP* in relation to that policy if the *ARP* was the only insurer multiplied by the short period *ARP* premium scale determined in accordance with paragraph 1.7 (if applicable)

**P** = the proportion, expressed as a percentage, in respect of which the *ARP* is liable in relation to that policy

## 1.7 Short Period *ARP* premium and *ARP* default premium

Subject to paragraph 1.10, in the case of a *firm* which:

- (a) obtains a *policy of qualifying insurance* from the *ARP* for any period other than twelve months commencing on the first day of an *indemnity period*; or
- (b) has a *policy of qualifying insurance* from the *ARP* which ceases before the end of the *indemnity period* including where the *firm* ceases to be an *eligible firm* or because it cancels the *ARP policy* before the end of the *indemnity period* because it has obtained a *policy of qualifying insurance* outside the *ARP*,

the *ARP premium* or *ARP default premium* payable in accordance with Part 1 of this Appendix shall, in respect of paragraph (a), be calculated or, in respect of paragraph (b), be re-calculated in proportion to the part of the *indemnity period* for which the *firm* obtains cover from the *ARP* on the basis of the formula:

$$P \times \frac{N}{Y}$$

where:

P is the annual *ARP premium* or *ARP default premium* (as the case may be) calculated for the whole of the *indemnity period*;

N is the number of days during the *policy period* (inclusive of the first and last day of the *policy period*); and

Y is 365.

Subject to paragraph 1.10, in the case of a *firm* to which paragraph 1.7(b) is applicable, a return premium shall be due to the *firm* concerned where the recalculated *ARP premium* or *ARP default premium* in respect of that *firm* is less than the *ARP premium* or *ARP default premium* paid by the *firm*,

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and the return premium shall be equal to the amount of that excess (if any). The *ARP manager* shall rebate the amount of the return premium to the *firm*.

However, there shall be no return premium due to the *insured firm* in the event that any claims, or circumstances that may give rise to claims, have been notified to the *ARP manager* during the *policy period* concerned. Furthermore, in the event that the *ARP insurers* are called upon to deal with a claim that was first made against the *insured firm* during the *policy period* concerned, but which claim the *insured firm* failed to notify to the *ARP manager*, the amount of the return premium shall be repaid to the *ARP manager*. The *ARP manager* may set off any return premium due to the *insured firm* against any part of the *ARP premium* which is due in respect of that *insured firm* but which remains unpaid.

## 1.8 Definition of Gross Fees

For the purposes of the *ARP* rating, Gross Fees means all professional fees of the *insured firm* for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the *insured firm* and notarial fees where a solicitor notary operates a notarial *practice* in conjunction with a solicitor's *practice*, but excluding only:

- (a) interest;
- (b) the reimbursement of disbursements;
- (c) any amount charged in respect of value added tax;
- (d) remuneration derived from any office excluded from the definition of private *practice* by these Rules;
- (e) dividends;
- (f) rents received by the *insured firm*;
- (g) income and capital profits from reserved funds established or other investments made by the *insured firm*.

Where the *insured firm* has been in existence for less than 12 months, the Gross Fees for *ARP* rating purposes shall be the *insured firm's* best estimate of the Gross Fees likely to be received during its first 12 months of trading. However, where the expiry date of the *indemnity period* precedes the completion date of the first 12 months of trading, the Gross Fees for *ARP* rating purposes shall be the *insured firm's* best estimate of the Gross Fees likely to be received during the period commencing with the starting date of the *practice* and ending with the expiry date of the *indemnity period*.

In the event that the estimated amount of Gross Fees differs from the actual amount of Gross Fees for the relevant period, the *ARP premium* shall be adjusted by reference to the actual amount of Gross Fees.

## 1.9 Premium payment

The *ARP premium* shall be paid to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

## 1.10 Run-off premium

If an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*, no return premium shall be payable to that *insured firm* in respect of that *ARP policy*.

In addition, in such circumstances the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every person held out as a partner of a *sole practitioner*) shall be required to pay to the *ARP* an additional premium equal to:

- 12/13 of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable, where such *indemnity period* was the period from 1 September 2003 to 30 September 2004; or
- 100 per cent of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable or would have been payable had the *insured firm* participated in the *ARP* for the whole of that *indemnity period*, in the case of any other *indemnity period*.

Such additional premium shall be payable to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

### 1.11 Suspended Practices

If:

- an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*; and
- that *insured firm's practice* subsequently restarts; and
- the *ARP manager* agrees to cancel such run-off cover

the *insured firm* shall be entitled to such reimbursement of premium (if any), as the *ARP manager* considers appropriate.

If, in addition, the *ARP manager* agrees to provide continuing cover in accordance with paragraph 5.4(b)(ii) of the *MTC*, the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every person held out as a partner of a *sole practitioner*) shall be liable to pay such additional premium (if any) as the *ARP manager* considers appropriate.

### 1.12 Self-Insured excesses for 2011/2012

The self-insured excess for each and every claim shall be calculated by multiplying the relevant number of *principals* by £4,500, subject to a maximum of £225,000 each claim. The relevant number of *principals* is the number of *principals* (including, for these purposes, every person held out as a partner of a *sole practitioner*) as at the inception date of the *policy*.

## 2 Method for calculation of the ARP default premium

The *ARP default premium* shall be an amount equal to the *ARP premium* calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.

## 3 Method for calculation of the ARP run-off premium

The *ARP run-off premium* shall be an amount equal to **A + B – C**, where:

**A** = The amount that would have been payable as the *ARP default premium* calculated in accordance with Part 2 above in relation to each *indemnity period* in which the *firm* has failed (whether for the whole of any part thereof) to obtain *qualifying insurance* prior to it becoming a *run-off firm* (including the *indemnity period* in which it ceased to practise)

**B** = A further amount equal to that which would have been payable as the *ARP default premium* calculated in accordance with Part 2 above (excluding any reduction under Part 1 paragraph 1.7) in relation to the *indemnity period* during which the *firm* ceased to practise

**C** = Any sum due under Rule 14.2



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*Commentary: In respect of A, the ARP default premium is calculated for the actual period during which the firm has practised whilst uninsured. The calculation shall be undertaken on an annual basis for each indemnity period in which the firm failed to obtain qualifying insurance subject to a pro rata reduction (pursuant to Part 1 paragraph 1.7) for any part of each such indemnity period for which the firm obtained qualifying insurance.*

*In respect of B, the ARP default premium is calculated on an annual basis for the whole of the indemnity period in which the firm ceased practise irrespective of whether the firm obtained qualifying insurance for any part of that indemnity period.*

## Appendix 3

### Special provisions for RELs

1 If:

- (a) one or more of the *principals* of an *insured firm* are *RELs* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *insured firm's practice* with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the *MTC (Full Home State Cover)*; and
- (b) the *Council* is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the *Council* may require from time to time but provided that the *Council* shall not be so satisfied if more than 25% of the *principals* are *solicitors*),

the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*.

2 If on an application by one or more *RELs* who are *principals* in an *insured firm*, the *Council* is satisfied that the *insured firm's practice* has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the *Council* may require from time to time), the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*, on condition that they take out and maintain a *difference in conditions policy*, which shall provide cover including the *MTC* as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

#### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clauses 6.2 or 6.12. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

- (b) Clause 4.9 shall be deleted and replaced with the following:

#### **4.9 Resolution of disputes**

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.3, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.

- (c) Clause 4.10 shall be deleted and replaced with the following:

**4.10 Conduct of a Claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim* (whether alone or in conjunction with the provider of the Partial Home State Cover). If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
  - (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
  - (c) it is fair and equitable in all the circumstances for such direction to be given;
- it may in its absolute discretion make such a direction.

- (d) Clause 4.12 shall be added:

**4.12 Period of insurance**

The *period of insurance* must not expire prior to the earlier of:

- (a) 30 September 2012; or
- (b) the date the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clause shall be added:

**6.11 Partial Home State Cover**

The insurance may exclude any liability of the *insurer* to the extent that any such liability is covered under the terms of the Partial Home State Cover irrespective of whether recovery is actually made in respect of such liability.

and in clause 8.2 the following definition shall be added:

**Partial Home State Cover** has the meaning given in Appendix 3 to the SRA Indemnity Insurance Rules 2011.

- 3 In the event of an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix ceasing for whatever reason to enjoy that exemption but continuing to carry on a *practice* it shall be treated for all the purposes of these Rules as though it had commenced the *practice* on the date when such exemption ceased.
- 4 Rule 6 (Insolvency Event) shall apply to an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a *qualifying insurer*.
- 5 In the case of an *insured firm* which has the benefit of an exemption under paragraph 2 of this Appendix all the provisions of these Rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a *qualifying insurer*.

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**Schedule 4**  
**Declarations of Relevant Premium Income by qualifying insurer**

(Schedule 1, paragraph 3)

**Part 1**

**INDEMNITY YEAR 2011/2012**

To be completed by the Qualifying Insurer and returned to the ARP Manager within 10 business days following the start of each Indemnity Period.

**Name of Qualifying Insurer**

.....

**Best estimate of Relevant Premium Income**

£.....

**Relevant Premium Income** means the Premium Payable to a Qualifying Insurer in respect of Policies (excluding ARP Policies) incepted in the period 1 October 2011 to 31 January 2012, to the extent that such premium relates to cover required in accordance with the Minimum Terms, as calculated in accordance with generally recognised accounting methodologies; and

**Premium Payable** means the premium due from each Insured Firm to a Qualifying Insurer (excluding any amount in respect of Insurance Premium Tax) in respect of the whole period of cover under a Policy, whether or not actually received by that Insurer, less (only) any amount due to any intermediary acting as agent of that Firm for the purpose of obtaining professional indemnity insurance.

I hereby declare that the information set out above constitutes a best estimate of the Relevant Premium Income of the above named Insurer for the period in question.

Signed: .....

Print name: .....

For and on behalf of the Qualifying Insurer named above

Date: .....

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**Part 2**

**INDEMNITY YEAR 2011/2012**

To be completed by the Qualifying Insurer) and returned to the ARP Manager by no later than 28 February in each Indemnity Period.

**Name of Qualifying Insurer**

.....

**Relevant Premium Income**

£.....

**Relevant Premium Income** means the Premium Payable to a Qualifying Insurer in respect of Policies (excluding ARP Policies) incepted in the period 1 October 2011 to 31 January 2012, to the extent that such premium relates to cover required in accordance with the Minimum Terms, as calculated in accordance with generally recognised accounting methodologies; and

**Premium Payable** means the premium due from each Insured Firm to a Qualifying Insurer (excluding any amount in respect of Insurance Premium Tax) in respect of the whole period of cover under a Policy, whether or not actually received by that Insurer, less (only) any amount due to any intermediary acting as agent of that Firm for the purpose of obtaining professional indemnity insurance.

I hereby declare that the information set out above constitutes a true and accurate view of the Relevant Premium Income of the above named Insurer for the period in question.

Signed: .....

Print name: .....

For and on behalf of the Qualifying Insurer named above

Date: .....

**Schedule 5  
Certificates of Insurance**

**Part A**

**CERTIFICATE OF QUALIFYING INSURANCE  
(In accordance with Rule 4 SRA Indemnity Insurance Rules 2011)**

**INDEMNITY YEAR 2011/2012**

To be completed by the Qualifying Insurer (or by the broker on behalf of the Qualifying Insurer) and sent to the Insured Firm at inception. The certificate may include other information in relation to the Policy if the Qualifying Insurer is required to include such information on certificates issued by it.

	<b>Share of compulsory cover underwritten / Limit of indemnity</b>
<b>Qualifying Insurer [and Lead Insurer]*</b>	
<b>Other Qualifying Insurers</b>	
<b>Name of Insured Firm</b> <small>[if more than one Firm is insured under a Policy, each Insured Firm must be named]</small>	
<b>Principal address of Insured Firm</b>	
<b>Period of insurance</b>	..... to 30 September 2012 both days inclusive
<b>Policy number(s) or insurer's or broker's reference(s)</b>	

[The insurers named hereon bind themselves each for their own part and not one for another. Each insurer's liability under this certificate shall not exceed that percentage of the risk shown against that insurer's name.]\*

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

For and on behalf of. \_\_\_\_\_

Date: \_\_\_\_\_

\*delete if not applicable

**Part B**

**CERTIFICATE OF ADDITIONAL PROFESSIONAL INDEMNITY INSURANCE**  
 (In accordance with Appendix 3 SRA Indemnity Insurance Rules 2011)

To be completed by the Qualifying Insurer (or by the broker on behalf of the Qualifying Insurer) and sent to the Insured Firm at inception. The certificate may include other information in relation to the Policy if the Qualifying Insurer is required to include such information on certificates issued by it.

	<b>Share of compulsory cover underwritten / Limit of indemnity</b>
<b>Qualifying Insurer [and Lead Insurer]*</b>	_____
<b>Other Qualifying Insurers</b>	_____
	_____
<b>Name of Insured Firm</b> <small>[if more than one Firm is insured under a Policy, each Insured Firm must be named]</small>	_____
<b>Principal address of Insured Firm</b>	_____
<b>Period of insurance</b>	From ..... to ..... both days inclusive
<b>Policy number(s) or insurer's or broker's reference(s)</b>	_____

<b>Details of Insurance under Registered European Lawyers' home professional rules:</b>	
<b>Name of insurer(s), fund or scheme</b>	
<b>Period of insurance</b>	From ..... to ..... both days inclusive
<b>Policy number(s) or insurer's or broker's reference(s)</b>	

[The insurers named hereon bind themselves each for their own part and not one for another. Each insurer's liability under this certificate shall not exceed that percentage of the risk shown against that insurer's name.]\*

Signed: \_\_\_\_\_  
 Print name: \_\_\_\_\_  
 For and on behalf of. \_\_\_\_\_  
 Date: \_\_\_\_\_

\*delete if not applicable

**Schedule 6**  
**Master policy for Firms carrying on Practice without Qualifying Insurance**

**(Clause 2.2)**

Type of cover	Solicitors' indemnity insurance in accordance with the SRA Indemnity Insurance Rules 2011 ( <b>Rules</b> ) as amended from time to time.
The Insurers	Qualifying Insurers, in accordance with the terms of the Qualifying Insurer's Agreement ( <b>QIA</b> ) made between each of them, the Law Society of England and Wales ( <b>the Society</b> ) and Capita Commercial Insurance Services Limited ( <b>the ARP Manager</b> ).
Master policy holder	The Society.
The assured	Each Firm which during any part of the Period of Insurance carries on Practice without Qualifying Insurance, including insurance through the Assigned Risks Pool ( <b>ARP Insurance</b> ), in breach of the Rules.
The cover	For Claims against the Assured in respect of civil liability and Defence Costs for each Assured as if each such Assured was the Insured Firm referred to in the attached ARP Insurance Contract or, as the case may be, ARP Run-off Insurance Contract.
Period of Insurance	The Period of Insurance in respect of a particular Firm is that part of the period between 1 October 2011 and 30 September 2012 (both days inclusive) for which the Firm does not have Qualifying Insurance (including ARP Insurance), or such longer period as may apply under the ARP Insurance in relation to Run-off cover.
Conditions	In accordance with the attached ARP Insurance Contract wording.
Conditions concerning recovery	The Society will be entitled (in its absolute discretion) to seek to recover on its own behalf and on behalf of the Insurers from each Assured and the Principals of the Assured (where applicable) and whether in accordance with the Rules or otherwise all amounts paid by the Insurers for Claims and Defence Costs paid under this Master Policy and the notional premium payable in accordance with the Rules. The Society shall pay to the Assigned Risks Pool any such sums that it thereby recovers, net of its costs and expenses thereby incurred.
Basis of Insurers' participation	<p>Each Insurer's share of a particular Claim is its Percentage Liability as at the earlier date of:</p> <ul style="list-style-type: none"> <li>• The date that the Claim was first notified to the Society; or</li> <li>• The date that the Circumstances which gave rise to the Claim were first notified to Society.</li> </ul> <p>Provided that, at that date, the particular Firm did not have Qualifying Insurance (including ARP Insurance) as required under the Rules.</p> <p>Claims or Circumstances notified to the ARP Manager will be deemed to be notified to the Society.</p>
Reporting	Quarterly in accordance with schedule 2 to the QIA, or otherwise as agreed.
Interpretation	In accordance with the QIA and Rules.
Premium	Such amount as the Society recovers from each Assured in accordance with the Rules, net of its costs and expenses thereby incurred.



Charges	ARP Manager's charges for administration and management costs and expenses (including any applicable Value Added Tax) payable on demand together with the costs and expenses of the Society of any Special Measures imposed on ARP Firms, in each case in accordance with the Assigned Risks Pool Management Agreement.
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**Schedule 7**  
**Pro forma Insured Firms Report**

(Clause 6.9)

Firm Name	<i>Either</i> <i>Or</i>		Postcode	Policy number	Inception Date	Expiry Date	Policy Extended or Renewed	COMPULSORY LAYERS		
	Law Society Firm ID No (Regis number)	Full address						1st £1m layer - % written	2nd £1m layer (£1m in excess of £1m) - % written	3rd £1m layer (£1m in excess of £2m) - % written

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**Schedule 8**  
**Binding Authority Agreement**



**Non-Marine**  
**Binding Authority Agreement**

**(Excluding U.S.A. & Canada Domiciled Coverholders)**

**LMA3019 (Broker)**  
**(20/07/2006)**  
**Form approved by Lloyd's Market Association**

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**NON-MARINE BINDING AUTHORITY AGREEMENT  
(EXCLUDING U.S.A. & CANADA DOMICILED COVERHOLDERS)**

This Binding Authority Agreement, the Schedule attached hereto and any endorsements hereon ('the Agreement') is made by and between the Underwriting Members of Lloyd's whose syndicate numbers and proportions are shown in the attached table ('the Underwriters'), and the Coverholder whose name and address is stated in the Schedule.

All communications between the Coverholder and the Underwriters shall be made via the Lloyd's Broker whose name and address is stated in the Schedule.

Whereas the Coverholder has sought authority to bind insurances on behalf of the Underwriters and has negotiated the grant of such authority through the Lloyd's Broker and has agreed to co-operate with and assist the Underwriters, their representatives and where appropriate the Lloyd's Broker in all matters pertaining to the Agreement, it is mutually understood and agreed between the Underwriters and the Coverholder as follows:

**FORMATION, SCOPE AND TERMINATION**

**SECTION 1  
EFFECTIVE DATE**

- 1.1 The Agreement shall take effect only when the Underwriters have acknowledged in writing receipt of a copy of the Agreement signed by the Coverholder;
- 1.2 Any amendment to the Agreement shall be evidenced in writing and endorsed hereon. All amendments shall be acknowledged in writing by the Coverholder;
- 1.3 Any renewal of the Agreement shall take effect only when the Underwriters have received from the Coverholder signed written acceptance of the terms of the renewal.

**SECTION 2  
PERIOD**

Subject to Section 1, the Agreement is effective during the period stated in the Schedule unless cancelled or terminated in accordance with Sections 4.2 and 16.

**SECTION 3  
PERSONS RESPONSIBLE FOR OPERATION AND CONTROL**

- 3.1 Notwithstanding 3.2 and 3.3, the person(s) named in 3.1 of the Schedule is(are) responsible for the overall operation and control of the Agreement;
- 3.2 The person(s) authorised to bind insurances is(are) named in 3.2 of the Schedule;
- 3.3 The person(s) with overall responsibility for the issuance of documents evidencing insurances bound is(are) named in 3.3 of the Schedule;
- 3.4 The person(s) authorised to exercise any claims authority granted by the Agreement is(are) named in 3.4 of the Schedule.

**SECTION 4  
GRANT OF AUTHORITY**

- 4.1 The Underwriters hereby authorise the Coverholder to:
  - 4.1.1 bind insurances and amendments thereto for the Underwriters' account;
  - 4.1.2 act as the Underwriters' agent in accordance with Section 33 for the purpose of receiving premiums from insureds and settling refunds and to receive claims money prior to onward transmission to insureds;

- 
- 4.2 The Coverholder shall comply with any direction, condition or requirement, including any direction to cancel or terminate the Agreement, given by Lloyd's to the Underwriters;
- 4.3 In respect of every insurance bound, the Coverholder has a duty to:
- 4.3.1 issue certificates of insurance, endorsements and such other documents evidencing cover as may be agreed in writing by the Underwriters;
- 4.3.2 collect and process premiums and return premiums on the Underwriters' behalf;
- 4.3.3 handle claims and/or settle claims if authorised;
- 4.4 The grant of authority under 4.1 and 4.3 shall be in accordance with the terms and conditions contained in the Agreement;
- 4.5 Nothing in the Agreement shall be construed as creating the relationship of employer and employee between the Underwriters and the Coverholder.

**SECTION 5  
DELEGATION OF AUTHORITY**

- 5.1 The grant of authority to bind insurances and issue documents evidencing insurances bound shall not be delegated by the Coverholder to any other person, firm, company or any branch office;
- 5.2 If any authority(ies) or responsibility(ies) other than those described under 5.1 is(are) delegated to a third party(ies), any such delegation must be in writing and the Underwriters must be a party to the written contract of delegation to the third party(ies).

**SECTION 6  
AUTHORISED CLASS(ES) OF BUSINESS AND COVERAGE(S)**

The Coverholder is authorised to bind insurances only of the class(es) and for the coverage(s) stated in the Schedule, subject to the exclusions stated in Section 7.

**SECTION 7  
EXCLUDED CLASS(ES) OF BUSINESS AND COVERAGE(S)**

The following shall not be bound:

- 7.1 war and civil war risks;
- 7.2 nuclear risks;
- 7.3 risks of financial guarantee, financial default, bankruptcy or insolvency;
- 7.4 master policies issued to a group, association, organisation or club for the benefit of its members under a group or mass marketed program;
- 7.5 any other class(es) of business or coverage(s) as stated in the Schedule.

**SECTION 8  
PERIOD OF INSURANCES BOUND**

- 8.1 No insurance shall be bound for a period greater than that stated in the Schedule;
- 8.2 Every insurance bound shall commence during the period of the Agreement;
- 8.3 No insurance shall be bound further in advance of its inception date than the number of days stated in the Schedule;

- 
- 8.4 No insurance shall be bound which provides for automatic or tacit renewal, unless otherwise agreed by the Underwriters;
- 8.5 Each insurance bound shall run to its contractual expiry date, unless cancelled or terminated in accordance with its individual cancellation or termination provisions;
- 8.6 In the event of cancellation or termination of any insurance bound the Coverholder shall comply with any applicable law relating to the cancellation or termination of such insurance and to the return of premium, commission, fees, charges and taxes.

**SECTION 9  
MAXIMUM LIMITS OF LIABILITY/SUMS INSURED**

The Coverholder is authorised to bind insurances only up to the limits of liability or sums insured stated in the Schedule.

**SECTION 10  
GROSS PREMIUM INCOME LIMIT**

- 10.1 The Coverholder shall not bind total gross premium income in excess of the limit stated in the Schedule;
- 10.2 The Coverholder shall monitor the total gross premium income bound and notify the Underwriters immediately if it becomes apparent that the total gross premium income is likely to exceed the percentage of the limit stated in the Schedule;
- 10.3 For the purposes of this Section, gross premium income shall be defined as all premiums and additional premiums, less return premiums (before deductions of any commission and excluding any tax or policy or other charges).

**SECTION 11  
TERRITORIAL LIMITATIONS**

- 11.1 The Coverholder is authorised to bind insurances only for risks located in the territory(ies) stated in the Schedule;
- 11.2 The Coverholder is authorised to bind insurances only for insureds domiciled in the territory(ies) stated in the Schedule;
- 11.3 The territorial limits of each insurance bound shall not be greater than those stated in the Schedule.

**SECTION 12  
AGGREGATES**

- 12.1 The Coverholder shall record and monitor the aggregate exposures as defined in the Schedule;
- 12.2 The Coverholder shall advise the Underwriters of the aggregate exposures at the intervals stated in the Schedule;
- 12.3 The Coverholder shall not bind total aggregate limits in excess of the amounts stated in the Schedule.

**SECTION 13  
PREMIUMS, DEDUCTIBLES AND EXCESSES FOR INSURANCES BOUND**

- 13.1 All gross premiums for insurances bound shall be calculated as stated in the Schedule;
- 13.2 The Coverholder shall incorporate Deductibles and/or Excesses in insurances bound as stated in the Schedule.

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**SECTION 14  
OTHER CONDITIONS AND/OR REQUIREMENTS RELATING TO THE OPERATION OF THE  
AGREEMENT**

- 14.1 The Coverholder shall comply with any conditions and/or requirements stated in the Schedule or endorsed hereon;
- 14.2 The Coverholder shall comply with any amendments to the Agreement as stated in the Schedule or endorsed hereon.

**SECTION 15  
AUTOMATIC RENEWAL OF INSURANCES BOUND**

- 15.1 The Coverholder shall maintain adequate records to identify and monitor, within any applicable time frames, all insurances bound which provide for or are subject to law granting automatic renewal or any extension of the period of any insurance bound;
- 15.2 The Coverholder shall review each insurance bound prior to its individual renewal date in order to offer renewal terms or to decline the renewal. This process shall be carried out in compliance with any applicable automatic renewal law;
- 15.3 The Coverholder is responsible for the necessary, timely and proper issuance of any notice of non-renewal for individual insurances bound to prevent their automatic renewal;
- 15.4 In the event of expiry, cancellation or termination of the Agreement, the Coverholder shall provide the Underwriters with details of the following as soon as possible:
- 15.4.1 all insurances in force at the date of expiry or the effective date of cancellation or termination of the Agreement, which are or may be subject to automatic renewal;
- 15.4.2 all insurances for which terms have been offered preceding the date of expiry or the effective date of cancellation or termination of the Agreement, which could be bound and may be subject to automatic renewal;
- 15.4.3 all insurances where automatic renewal cannot be or has not been prevented;
- 15.5 After the initial report by the Coverholder, the Coverholder shall continue to provide details of all such insurances on a monthly basis.

**SECTION 16  
CANCELLATION AND TERMINATION**

- 16.1 Without prejudice to the terms of 16.2 and 16.3, the Agreement may be cancelled at any time by either party giving to the other not less than:
- 16.1.1 the number of days notice in writing as stated in the Schedule; or
- 16.1.2 the minimum notice period, if any, required by local law;
- Any such notice will be effective from the date given, and the Agreement will terminate upon the expiration of the period of such notice;
- 16.2 Unless the Underwriters specifically agree to the contrary in writing, the Agreement will be automatically terminated in the event the Coverholder shall:
- 16.2.1 become the subject of voluntary or involuntary rehabilitation or liquidation proceedings;
- 16.2.2 become the subject of an action in bankruptcy;
- 16.2.3 make or propose any composition with its creditors or make any assignment for the benefit of its creditors or otherwise acknowledge its insolvency;



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- 16.2.4 have imposed by a court of competent jurisdiction the appointment of an administrator or administrative receiver or equivalent office holder;
- 16.2.5 have a receiver or equivalent office holder appointed for the whole or any part of the Coverholder's business;
- 16.2.6 be merged with, acquired by or otherwise absorbed by any individual, corporation or other business entity or organisation of any kind;
- 16.2.7 being a partnership, be dissolved by agreement between the partners or by operation of law;
- 16.2.8 cease, for whatever reason, to be regulated by the Financial Services Authority or other regulatory body or have any relevant license or authority to conduct business suspended, removed or impaired by any order or decree of any judicial or regulatory authority;
- 16.3 The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 16.3.1 to 16.3.3 inclusive;

The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;

- 16.3.1 The Coverholder fails to comply with any of the provisions of the Agreement;
- 16.3.2 Any past or present director, officer, partner or employee of the Coverholder or any individual named in the Agreement is convicted of or charged with any criminal offence involving fraud or dishonesty or any other criminal offence that may materially affect the operation of the Agreement;
- 16.3.3 The Lloyd's Broker is suspended as a Lloyd's Broker or ceases to have permission to transact insurance business at Lloyd's as a Lloyd's Broker unless an alternative Lloyd's Broker is mutually agreed in writing by the Underwriters and the Coverholder;
- 16.4 The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1 and 16.3.2. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters' rights under 16.3;

The Underwriters shall advise the Coverholder immediately upon becoming aware of the occurrence of the events in 16.3.3;

- 16.5 The receiving party shall immediately acknowledge in writing receipt of any notice of cancellation or termination given by the other party. However, failure to acknowledge receipt of any notice will not prejudice the effect of the notice of cancellation or termination;
- 16.6 Notice of cancellation or termination shall be sent by prepaid registered post to the address(es) of the parties as stated in the Schedule. Proof of posting shall be sufficient proof of notice having been served.

## **SECTION 17 EFFECT OF EXPIRY, CANCELLATION OR TERMINATION**

- 17.1 At any time during any period of notice of cancellation or termination of the Agreement, the Coverholder shall have no authority to extend insurances already bound without the prior written consent of the Underwriters;
- 17.2 With effect from the date of expiry, cancellation or termination of the Agreement:
- 17.2.1 except as stated in 17.3 below, the Coverholder shall have no authority to offer terms, bind insurances, renew, cancel, extend, amend or alter in any way insurances already bound without the prior written consent of the Underwriters. Such written consent shall only be effective where it is not in contravention of local law;

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- 17.2.2 the Coverholder remains under a duty to perform its obligations in accordance with the terms and conditions of the Agreement until every insurance has expired or has otherwise been cancelled or terminated and, in respect of claims arising under such insurances, until all such claims have been paid or otherwise resolved unless otherwise instructed by the Underwriters;
- 17.2.3 the Coverholder shall deliver promptly to the Underwriters or their appointed representative all unused certificates of insurance, other documents and other unused materials which it possesses in connection with the Agreement and ensure that any electronic storage and/or production of such documents ceases;
- 17.2.4 the Underwriters' rights to receive monies due in respect of insurances bound shall not be affected and the Coverholder agrees not to challenge these rights provided always that, if the Underwriters at their written option collect monies from insurance brokers or other insurance intermediaries, insureds or others from whom monies may be due in respect of insurances bound, the Underwriters shall give the Coverholder credit for such sums;
- 17.3 With effect from the date of expiry of the Agreement, unless the Underwriters instruct the Coverholder otherwise, the Coverholder shall retain the authority under the Agreement to cancel, amend or alter insurances already bound until every such insurance has expired or has otherwise been cancelled or terminated and, in respect of claims arising under such insurances, until all such claims have been paid or otherwise resolved;
- 17.4 Where the Agreement has terminated pursuant to 16.2.8, and/or because the Coverholder otherwise ceases to have the required authorisation or right (or any relevant exemption therefrom), the Coverholder will not be under the duty referred to in 17.2.2 if its obligations under the Agreement would, if performed, cause it to be in breach of any applicable regulatory prohibition; in such circumstances the Coverholder shall be under a duty to cooperate with and implement all reasonable instructions from the Underwriters to effect the transfer of servicing of the insurances bound by the Coverholder to such parties as the Underwriters may appoint.

## **DOCUMENTATION FOR INSURANCES BOUND**

### **SECTION 18 APPLICATIONS OR PROPOSAL FORMS**

Any specific application or proposal form to be used by the Coverholder shall be agreed by the Underwriters prior to use and if appropriate identified in the Schedule.

### **SECTION 19 DOCUMENTS ISSUED**

- 19.1 The Coverholder shall issue a certificate in respect of every insurance bound and an endorsement in respect of every change made to each insurance bound:
- 19.1.1 Certificates issued shall be uniquely numbered and shall include the Agreement number stated in the Schedule;
- 19.1.2 Endorsements, if any, shall be uniquely and consecutively numbered for the certificate concerned;
- 19.2 Each certificate and endorsement issued shall bear the signature of one or more of the persons named in 3.1, 3.2 or 3.3 of the Schedule;
- 19.3 If required by local law or the insured requires that an insurance is evidenced by a policy instead of a certificate, the Coverholder shall request a policy and such policy shall be issued by the Underwriters and any certificate issued shall be void;
- 19.4 Immediately upon binding the Coverholder shall issue evidence of insurance to the insured or the insured's agent. Certificates and endorsements shall be issued as soon as practicable, but in any event, no later than 30 days after inception, or in accordance with local law;
- 19.5 The Coverholder shall retain a copy of all documents issued;

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- 19.6 Unless otherwise stated in the Schedule or upon request, the Coverholder shall send a copy of all such documents issued to the Underwriters.

## **SECTION 20 FORMAT AND APPROVAL OF CERTIFICATES**

The format of any certificate or renewal certificate to be issued by the Coverholder shall be as stated in the Schedule and agreed by the Underwriters prior to use.

## **SECTION 21 WORDINGS, CONDITIONS, CLAUSES, ENDORSEMENTS, WARRANTIES AND EXCLUSIONS APPLICABLE TO INSURANCES BOUND**

- 21.1 All insurances bound shall be subject to the wordings, conditions, clauses, endorsements, warranties and exclusions as stated in the Schedule;
- 21.2 Each certificate must contain the full text of each wording, condition, clause, endorsement, warranty, exclusion and any other document(s) forming part of the individual contract of insurance. Furthermore all included wordings, conditions, clauses, endorsements, warranties, exclusions and other documents shall be identified and itemised in or upon the certificate;
- 21.3 Each certificate must identify the law and jurisdiction applicable to the contract of insurance, the period of insurance, the limits of liability or sums insured, the amount of the premium and any other applicable provisions that may be required under relevant local laws and regulations;
- 21.4 Each certificate shall contain a Several Liability Notice as stated in the Schedule;
- 21.5 Except where the binding or administration of the insurances is regulated by the Financial Services Authority:
- 21.5.1 Each certificate must contain a statement to the effect that all enquiries and disputes should be addressed to the Coverholder whose name and address must be clearly stated on the certificate;
- 21.6 Where the binding or administration of the insurances is regulated by the Financial Services Authority:
- 21.6.1 Each certificate shall show the name and address of the Coverholder and shall contain a statement that:
- 21.6.1.1 All claims and other enquiries shall be addressed to the entity whose name and address is stated in 21.6.1.1 of the Schedule;
- 21.6.1.2 All complaints must be referred in the first instance to the Coverholder and, if no satisfaction is obtained, complaints can be referred to the Complaints Department, Lloyd's at the address stated in 21.6.1.2 of the Schedule;
- 21.6.1.3 Where the Coverholder deals with the insured through a retail agent, in respect of any claims referred by the insured to the Coverholder, the Coverholder acts as agent for the Underwriters and not the insured;
- 21.6.1.4 Lloyd's is regulated by the Financial Services Authority ('the FSA') whose address is stated in 21.6.1.4 in the Schedule.

## **SECTION 22 JOINT CERTIFICATES**

- 22.1 No Joint Certificate shall be issued under the Agreement except in accordance with 22.3;
- 22.2 For the purposes of the Agreement 'Joint Certificate' is a certificate or other document evidencing insurance accepted under the Agreement and which also evidences a proportion of

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the insurance accepted for other Lloyd's Underwriters or for insurers which are not Underwriting Members of Lloyd's (hereinafter 'the other insurer(s)');

22.3 Joint Certificates may be issued provided the Underwriters have granted permission as indicated in the Schedule and that in each instance:

22.3.1 the Underwriters have established the identity of the other insurer(s) which is(are) named in the Schedule;

22.3.2 the Joint Certificate shall include all the details that are required to be included in insurance documentation evidencing contracts of insurance that are issued by an approved Coverholder under a registered binding authority or by a restricted Coverholder under a restricted binding authority;

22.3.3 the proportion or amount of risk accepted by the Underwriters is expressly stated on the Joint Certificate and is specified separately from the proportion or amount of risk accepted by the other insurer(s);

22.3.4 the Joint Certificate must contain the following statement, in lieu of the Several Liability Notice as stated in 21.4 of the Schedule:

'The insurers named hereon bind themselves each for their own part and not one for another. Each insurer's liability under this certificate shall not exceed that percentage or amount of the risk shown against that insurer's name';

22.3.5 the issuance of Joint Certificates has been confirmed as an acceptable practice by the Lloyd's General Representative in the country or territory in which the Coverholder intends to issue the Joint Certificate or, in the absence of such a General Representative, by the Franchise Board of Lloyd's;

Nothing in this Section 22 shall permit a Joint Certificate to be issued in circumstances where that would contravene any relevant territorial general cover condition or would contravene any requirements of the jurisdiction in which the Coverholder is domiciled or any other jurisdiction in which the Coverholder trades, provides services or does business.

## **SECTION 23 SECURITY OF DOCUMENTS**

All stocks of certificates of insurance, endorsements and other documents and any electronic method of storing and/or producing documentation shall be kept secure at all times. If requested by the Underwriters, the Coverholder shall promptly return or destroy all unused documents relating to the Agreement and ensure that any electronic storage and/or production of such documents ceases.

## **SETTLEMENT OF CLAIMS FOR INSURANCES BOUND**

### **SECTION 24 PROCEDURE FOR THE HANDLING AND SETTLEMENT OF CLAIMS**

The procedure for the handling and settlement of claims shall be as stated in the Schedule.

## **ACCOUNTING AND COMMISSIONS**

### **SECTION 25 BORDEREAUX, ACCOUNTS AND SETTLEMENTS**

25.1 All premiums, paid claims, outstanding claims and expenses relating to insurances bound shall be allocated and declared to the Agreement;

25.2 The Coverholder shall prepare premium bordereaux at the interval stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated;

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- 25.3 If the Coverholder is responsible for the production of claims bordereaux as indicated in the Schedule, the Coverholder shall prepare claims bordereaux for paid claims and outstanding claims at the claims bordereaux interval stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated and all such claims have been paid or otherwise resolved;
- 25.4 The Coverholder shall produce premium bordereaux and, if due from the Coverholder, claims bordereaux in a format(s) agreed in advance by the Underwriters;
- 25.5 All bordereaux due from the Coverholder shall be sent to the Lloyd's Broker within the number of days of the end of such bordereaux interval(s), as stated in the Schedule. In the event of there being no activity during a particular bordereau interval, the Coverholder shall advise the Lloyd's Broker accordingly within the number of days of the end of such bordereaux interval(s) as stated in the Schedule;
- 25.6 If the Coverholder is responsible for the production of claims bordereaux, the Coverholder shall also produce and render to the Lloyd's Broker a summary account showing:
- 25.6.1 the premium declared on the bordereau, gross and net of commission, taxes and any other deductions;
- 25.6.2 the amount declared on the paid claims bordereau;
- 25.7 Settlements shall be remitted via the Lloyd's Broker within the maximum number of days of the end of each such bordereaux interval(s) as stated in the Schedule;
- 25.8 Any fees or charges that are agreed to be reimbursed by the Underwriters to the Coverholder as a deduction from the premium shall be deducted from the premium bordereaux. Such deductions are as stated in the Schedule.

## **SECTION 26 COMMISSION(S)**

- 26.1 The Coverholder's Commission shall be as stated in the Schedule;
- 26.2 Contingent or Profit Commission shall be as stated in the Schedule.

## **SECTION 27 REFUND OF UNEARNED COMMISSIONS**

The Coverholder shall refund to the Underwriters commissions on all cancelled insurances and return premiums, at the same rates at which such commissions were originally allowed to the Coverholder.

## **GENERAL REQUIREMENTS**

### **SECTION 28 INTERNET TRADING**

- 28.1 The Coverholder shall not offer, negotiate, accept, decline, process or otherwise transact insurances to be bound via any internet site, portal or similar system except as may be agreed by the Underwriters;
- 28.2 The Coverholder shall provide, without any restriction or limitation, the Underwriters or their representatives with any details or information pertaining to such systems which the Underwriters or their representatives may at any time request. The Coverholder shall allow the Underwriters or their representatives to inspect such systems at any time;
- 28.3 The Underwriters have the right to require the Coverholder to cease offering, negotiating, accepting, declining, processing or otherwise transacting insurances to be bound via such systems in whole or in part.

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**SECTION 29  
FEES AND CHARGES**

Policy, service and other fees and charges applied by the Coverholder must not breach any local law(s) or regulatory practice(s) which may be in force at the time. All such policy, service and other fees and charges must be shown separately and not concealed from the insured or the Underwriters.

**SECTION 30  
EXPENSES**

The Coverholder shall bear and pay all charges and expenses incurred by the Coverholder in the operation of the Agreement except as agreed under 25.8.

**SECTION 31  
TAXES**

- 31.1 It is the responsibility of the Coverholder:
- 31.1.1 to ensure the collection and forwarding to the Underwriters of any tax(es) due from insureds and disbursement of any refunds of such tax(es) due to insureds; and
  - 31.1.2 where required by local law, to collect tax(es) due from insureds and pay tax(es) to the appropriate authorities and to make any necessary returns and to ensure any disbursements of refunds of such taxes are made to insureds;
- 31.2 All tax(es) must be shown separately on the certificate issued to the insured and not concealed from the insured or the Underwriters;
- 31.3 All records in respect of tax(es) must be maintained for a minimum period of 7 years or in accordance with local law if greater;
- 31.4 The Coverholder shall immediately notify the Underwriters of any tax inspection or audit in relation to the Agreement or any insurance bound under the Agreement and of the results of such inspection or audit.

**SECTION 32  
PREMIUM FINANCE CONTRACTS**

- 32.1 The Coverholder shall not enter into or permit others to enter into premium finance arrangements in the name of and on behalf of the Underwriters;
- 32.2 If the Coverholder or any other party enter(s) into a premium finance arrangement in respect of premium(s) for insurance(s) bound, the arrangement(s) shall be solely in the name and entirely for the account of the Coverholder or such other party and the Underwriters will not accept responsibility for any such arrangement(s).

**SECTION 33  
SEPARATE BANK ACCOUNTS**

All monies received by the Coverholder, from or on behalf of the Underwriters, shall be received by the Coverholder in a fiduciary capacity on behalf of the Underwriters and shall be:

- 33.1 deposited immediately into an account separate from the Coverholder's general or operating account for onward transmission for the purposes set out in 33.3 and shall not be otherwise held or retained;
- 33.2 identified in the Coverholder's book of account, separately from other funds similarly held by the Coverholder for other insurers;
- 33.3 used solely for the purpose of settling accounts with the Underwriters or the payment of the commissions, premium refunds, claims or any other transaction authorised by the Underwriters.

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**SECTION 34  
RECORDS AND STATISTICAL INFORMATION REQUIRED BY THE UNDERWRITERS**

- 34.1 The Coverholder shall establish and maintain complete records relating to all insurances bound. Such records shall be and shall remain the property of the Underwriters;
- 34.2 The Coverholder shall prepare statistical information as stated in the Schedule at the interval(s) stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated. The Coverholder shall send such information to the Lloyd's Broker within the maximum number of days of the end of each interval as stated in the Schedule;
- 34.3 The Underwriters or their representatives shall have the right at any time, without any restriction or limitation, to inspect and audit any records and statistical information of the Coverholder relating to insurances bound and to the operation of the Agreement and shall have the right to make copies or extracts of any such records;
- 34.4 If the Agreement is a restricted binding authority, as defined in the Lloyd's Delegated Underwriting Byelaw (No. 1 of 2004), the Coverholder agrees to permit access to Lloyd's, at any time during usual business hours and on reasonable notice, to inspect and audit any records, statistical information, accounts and business processes relating to the operation of the Agreement;
- 34.5 The Underwriters reserve the right for themselves or their representatives to access the premises of the Coverholder at any time for the purpose of carrying out any inspection or audit;
- 34.6 The Coverholder shall retain all records relating to all insurances bound for a minimum of 7 years or for such longer period as may be required by local law.

**SECTION 35  
ADVERTISING**

- 35.1 The Coverholder may only refer (or permit any other party to refer) to Lloyd's in any publicity, letterheads, directories or advertising material, whether in print, electronic or any other form or media, in accordance with the rules and guidelines issued by Lloyd's and with the agreement of the Underwriters and subject to all local insurance regulatory requirements. Details of the current rules and guidelines are available to the Coverholder from the Lloyd's Broker or from Lloyd's;
- 35.2 The Coverholder must agree with the Underwriters any specific marketing material to be used in relation to the insurances to be bound.

**SECTION 36  
INDEMNITY INSURANCE**

- 36.1 The Coverholder shall maintain, for the duration of the Agreement, indemnity insurance acceptable to the Underwriters providing coverage in connection with the operation of the Agreement for any liability arising out of negligent acts, errors or omissions by the Coverholder including any past or present director, officer, partner or employee of the Coverholder;
- 36.2 The Coverholder shall provide the Underwriters or their representatives with evidence acceptable to the Underwriters confirming such insurance if requested;
- 36.3 The Coverholder shall inform the Underwriters of any changes to the indemnity insurances providing coverage in connection with the operation of the Agreement.

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## **JURISDICTION AND DISPUTES**

### **SECTION 37 COMPLIANCE WITH THE LAW**

Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.

### **SECTION 38 COMPLAINTS OR PROCEEDINGS**

The Coverholder shall notify the Underwriters immediately upon becoming aware of any matter arising out of the operation of or in connection with the Agreement which has resulted or could result in a complaint to any regulatory authority or gives rise to litigation or proceedings against the Underwriters, the Coverholder or the Lloyd's Broker.

### **SECTION 39 JURISDICTION AND GOVERNING LAW**

The Agreement is subject to English law and practice and to the exclusive jurisdiction of the English courts.

### **SECTION 40 ENFORCEABILITY CLAUSE**

In the event any portion of the Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### **SECTION 41 SEVERAL LIABILITY**

The liability of the Underwriters is several and not joint and is limited solely to the extent of their individual proportions as shown in the attached table. The Underwriters are not responsible for the subscription of any co-subscribing underwriter or any other insurer or co-insurer who for any reason does not satisfy all or part of its obligations.

### **SECTION 42 GENERAL INTERPRETATION**

In the Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement. References to "law" include references to any applicable, common or customary law and any treaty, constitution, statute, legislation, decree, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.

### **ADDITIONAL PROVISIONS APPLICABLE TO THE UNITED KINGDOM**

Sections 43 and 44 are part of the Agreement if and only if the Coverholder is transacting business in the United Kingdom.

### **SECTION 43 DATA PROTECTION ACT**

The Coverholder shall comply with its obligations under the Data Protection Act 1998, whether as a data controller or data processor (as appropriate), and if the former, the Coverholder shall ensure that it is included in the register maintained by the Information Commissioner.



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The Coverholder shall process data regarding insureds and prospective insureds in accordance with the Data Protection Principles (including, where the Coverholder is acting as data processor, the Seventh Data Protection Principle) and for the purposes only of providing insurance to insureds and prospective insureds and of handling claims to the extent allowed by the Agreement.

**SECTION 44**  
**CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE**

A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**LMA3019 (Broker)**  
**(20/07/2006)**

Form approved by Lloyd's Market Association

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**SCHEDULE**

This Schedule forms part of and incorporates by reference LMA3019 (the 'Agreement'), which Agreement is identified by the Agreement Number and Unique Market Reference Number stated below. For the purposes of interpretation, the contents of this Schedule shall have meaning only as provided for in the Agreement.

**Agreement Number:** FB221/10

**Unique Market Reference Number:** B0509QF044010 in respect of Lloyd's underwriters  
B0397QF0044010 in respect of non-Lloyd's market

**The Coverholder:** Capita Commercial Insurance Services Limited

**Address:** 40 Dukes Place  
London EC3A 7NH

<b>The Broker:</b>	<b>Lloyd's Broker</b>	<b>Non Lloyd's Broker</b>
	Marsh Ltd	Capita Commercial Insurance Services Limited
<b>Address:</b>	Tower Place London EC3R 5BU	40 Dukes Place London EC3A 7NH

**AGREEMENT SECTION NUMBER**

**NARRATIVE**

**Section 2**

**PERIOD:**

From: 00.00hrs local standard time 1<sup>st</sup> October 2011 at the above address

To: 24.00 hrs local standard time 30<sup>th</sup> September 2012 at the above address

**Sub-section 3.1**

**THE PERSON(S) RESPONSIBLE FOR THE OVERALL OPERATION AND CONTROL:**

Paul Harbison / Tracey Garrett

**Sub-section 3.2**

**THE PERSON(S) AUTHORISED TO BIND INSURANCES:**

Tracey Garrett / Jo Snell

**Sub-section 3.3**

**THE PERSON(S) WITH OVERALL RESPONSIBILITY FOR THE ISSUANCE OF DOCUMENTS EVIDENCING INSURANCES BOUND:**

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Paul Harbison  
Jo Snell  
Tracey Garrett

**Sub-section 3.4**            **THE PERSON(S) AUTHORISED TO EXERCISE ANY CLAIMS AUTHORITY:**

In accordance with the terms of the Qualifying Insurer's Agreement (QIA) including Schedule 1, the Assigned Risks Pool:  
Paul Harbison  
  
Tracey Garrett

**Section 6**                **AUTHORISED CLASS(ES) OF BUSINESS AND COVERAGE(S):**

Solicitors Indemnity Insurance

(Subject to the terms, conditions, exclusions and limitations of the Agreement)

**Sub-section 7.5**            **OTHER EXCLUDED CLASS(ES) OF BUSINESS OR COVERAGE(S):**

None

**Sub-section 8.1**            **PERIOD OF INSURANCES BOUND:** 12 months

**MAXIMUM PERIOD OF INSURANCES BOUND:**        84 months  
including odd time

**Sub-section 8.3**            **MAXIMUM ADVANCE PERIOD FOR INCEPTION DATES:**    30 days

**Section 9**                **MAXIMUM LIMITS OF LIABILITY/SUMS INSURED:**

The Coverholder is authorised to bind insurances up to the following limits of liability or sums insured which shall not be exceeded in any circumstances.

GBP2,000,000 any one claim plus defence costs  
GBP3,000,000 any one claim plus defence costs in respect of Relevant Recognised Bodies

**Sub-section 10.1**            **GROSS PREMIUM INCOME LIMIT:**    GBP20,000,000

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<b>Sub-section 10.2</b>	<b>NOTIFIABLE PERCENTAGE OF THE LIMIT NOT TO EXCEED: 75%</b>
<b>Sub-section 11.1</b>	<b>RISKS LOCATED IN:</b> England and Wales
<b>Sub-section 11.2</b>	<b>INSUREDS DOMICILED IN:</b> England and Wales
<b>Sub-section 11.3</b>	<b>TERRITORIAL LIMITS:</b> Worldwide
<b>Sub-section 12.1</b>	<b>BASIS OF MONITORING</b> <b>AGGREGATE EXPOSURES:</b> None
<b>Sub-section 12.2</b>	<b>REPORTING INTERVALS:</b> Not applicable
<b>Sub-section 12.3</b>	<b>MAXIMUM TOTAL AGGREGATE</b> <b>LIMIT(S):</b> Not applicable
<b>Sub-section 13.1</b>	<b>BASIS FOR THE CALCULATION OF GROSS PREMIUMS:</b>  All premiums for insurances bound under the Agreement shall be calculated (incorporating any applicable Deductibles and/or Excesses as shown in 13.2) as follows;-  In accordance with Appendix 2, Rating Schedule for 2011/2012 of Schedule 3, SRA Indemnity Insurance Rules 2011, of the QIA plus UK insurance premium tax at the applicable rate in respect of UK insureds.
<b>Sub-section 13.2</b>	<b>DEDUCTIBLES AND/OR EXCESSES:</b>  In accordance with Appendix 2, Rating Schedule for 2011/2012. of Schedule 3, SRA Indemnity Insurance Rules 2011, of the QIA.
<b>Sub-section 14.1</b>	<b>OTHER CONDITIONS AND /OR REQUIREMENTS RELATING TO THE OPERATION OF THE AGREEMENT:</b>  This is a restricted binding authority as defined in the Delegated Underwriting Byelaw.  The Coverholder shall produce to the Franchise Board any information, documents, books, records and other materials which, in the opinion of the Franchise Board relate or purport to relate to the operation of this restricted binding authority and give to the Franchise Board or its agent or general representative all reasonable facilities in its premises for the purpose of examining such materials.  Accounts shall be remitted within 90 days of the end of each bordereaux period however, in accordance with the terms of the QIA, no premium will fall due for settlement until 3 months and 20 business days after the end of the indemnity period as defined in the QIA. In the event that the separate account held by the

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Coverholder to keep all premiums does not at any time contain sufficient funds to pay the claims costs, expenses, charges and other deductions permitted under the terms of the QIA, the Coverholder will prepare a bordereau of such items for immediate settlement by Underwriters.

LMA5097 Binding Authority Combined Certificates Endorsement as attached

## **Sub-section 14.2**

### **AMENDMENTS**

The following sections of LMA 3019 (the "Agreement"), of which this Schedule forms a part, shall be amended by the amendment or substitution set out below:

Within the preamble to the binding authority the definition of 'the Underwriters' is amended to read 'the Underwriting Members of Lloyd's whose syndicate numbers and proportions are shown in the attached table and the Insurance Companies whose names and proportions are shown in the attached table'

SECTION 4 GRANT OF AUTHORITY is amended as follows:

The following words are added to the end of 4.3 "in accordance with the terms of the QIA and the Assigned Risks Pool Management Agreement ("ARPMA") and this agreement. In the event of any conflict between the terms of the QIA, the ARPMA and this agreement the QIA shall prevail over the other agreements."

SECTION 16 CANCELLATION AND TERMINATION is amended to read as follows:

16.1 The Agreement may only be cancelled or terminated as detailed in the QIA. It is noted that the Agreement may only be cancelled by the Underwriters by notice in writing to the Coverholder to take effect at the end of an Indemnity Period (as defined in the QIA), but termination does not prevent the Coverholder from retrospectively binding cover for firms in default.

16.2 Notice of cancellation or termination shall be sent by prepaid registered post to the address(es) of the parties as stated in the Schedule. Proof of posting shall be sufficient proof of notice having been served.

Section 19 DOCUMENTS ISSUED

Section 19.1.1 is amended to read as follows:

Certificates issued shall be uniquely numbered

Section 19.4 is amended to read as follows:

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Immediately upon binding, the Coverholder shall confirm cover to the insured or the insured's agent. Certificates and endorsements shall be issued to Insured's within 10 business days following the determination of the ARP percentage participation of each insurer.

Section 21 – Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to Insurances Bound

Section 21.6.1.2 is amended to read as follows "All complaints must be referred in the first instance to the Coverholder and, if not satisfaction is obtained, complaints can be referred to: Policyholder & Market Assistance, Lloyd's Market Services, One Lime Street, London, EC3M 7HA and/or the complaints managers at your participating insurers as applicable.

Section 21.6.1.4 is amended to read as follows "U.K. Underwriters are regulated by the Financial Services Authority ('the FSA') whose address is stated in 21.6.1.4.in the Schedule

**Section 30 EXPENSES**

The following words are added to the beginning of this clause "Except as contained in the QIA"

**Section 32 PREMIUM FINANCE CONTRACTS**

This section is deleted in its entirety.

**Sub-section 16.1.1**                    **NUMBER OF DAYS NOTICE OF CANCELLATION:** Not applicable

**Section 18**                            **APPLICATIONS OR PROPOSAL FORMS:** As notified by the Coverholder from time to time

**Sub-section 19.6**                    **VARIATIONS TO THE STATED PROCEDURE IN RELATION TO COPY DOCUMENTS:**  
Copy certificates to be supplied to Underwriters only on request

**Section 20**                            **FORMAT OF CERTIFICATES:**  
As per Schedule A attached.

**Sub-section 21.1**                    **WORDINGS, CONDITIONS, CLAUSES, ENDORSEMENTS, WARRANTIES AND EXCLUSIONS APPLICABLE TO INSURANCES BOUND:**  
  
The wording for cover is the attached Contract of Assigned Risks Pool Insurance (per schedule 3 to the QIA); and

The following additional conditions, clauses, warranties and exclusions shall attach and apply to every insurance bound hereunder:-

LSW1002 E.U. Disclosure Clause as applicable.

**Sub-Section 21.4**

**SEVERAL LIABILITY NOTICE:**

**PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY**

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

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Sub-sections 21.6.1.1 to 21.6.1.4 only apply where the binding or administration of the insurances is regulated by the FSA:

**Sub-section 21.6.1.1**

**THE NAME AND ADDRESS TO WHOM THE INSURED SHOULD DIRECT ALL CLAIMS AND OTHER ENQUIRIES:**

Emma Skelton, Capita Commercial Insurance Services Limited, 40 Dukes Place, London EC3A 7NH

<b>Sub-section 21.6.1.2</b>	<b>THE ADDRESS OF THE COMPLAINTS DEPARTMENT, LLOYD'S:</b>  Policyholder & Market Assistance, Lloyd's Market Services, One Lime Street, London, EC3M 7HA
<b>Sub-section 21.6.1.4</b>	<b>THE ADDRESS OF THE FSA:</b>  25 The North Colonnade Canary Wharf E14 5HS
<b>Section 22.3</b>	<b>JOINT CERTIFICATES:</b> other Lloyd's Underwriters - Permitted/ <del>Not Permitted</del> non Underwriting Members of Lloyd's – Permitted/ <del>Not Permitted</del> (and subject always to the provisions of Section 22)
<b>Section 22.3.1</b>	<b>IDENTITY OF OTHER INSURERS:</b> All signatories to the QIA being certain Underwriters at Lloyd's of London and various non –Lloyd's insurers
<b>Section 24</b>	<b>PROCEDURE FOR THE HANDLING AND SETTLEMENT OF CLAIMS:</b> In accordance with the terms of the QIA, including Schedule 1, The Assigned Risks Pool
<b>Sub-section 25.2</b>	<b>PREMIUM BORDEREAUX INTERVAL:</b> Quarterly
<b>Sub-section 25.3</b>	<b>CLAIMS BORDEREAUX (PAID AND OUTSTANDING) TO BE PRODUCED BY THE COVERHOLDER:</b> Yes <b>CLAIMS BORDEREAUX INTERVAL:</b> Quarterly
<b>Sub-section 25.5</b>	<b>MAXIMUM PERIOD FOR SUBMISSION OF BORDEREAUX:</b> 30 days
<b>Sub-section 25.7</b>	<b>MAXIMUM PERIOD FOR REMITTANCE OF SETTLEMENTS:</b> 90 days
<b>Sub-section 25.8</b>	<b>FEES AND CHARGES TO BE DEDUCTED BY THE COVERHOLDER:</b> As contained in the QIA
<b>Sub-section 26.1</b>	<b>THE COVERHOLDER'S COMMISSION:</b> Not applicable
<b>Sub-section 26.2</b>	<b>CONTINGENT OR PROFIT COMMISSION:</b> Not applicable



**Sub-Section 34.2**

**STATISTICAL INFORMATION REQUIRED BY THE UNDERWRITERS:**

**REPORTING INTERVAL(S):** Not applicable

**MAXIMUM NUMBER OF DAYS:** Not applicable

**BINDING AUTHORITY COMBINED CERTIFICATES ENDORSEMENT  
(For use in conjunction with LMA Binding Authority Agreements)**

Notwithstanding any reference to Joint Certificates in the Agreement/Schedule and/or (where applicable) U.S. General Cover Conditions the following provisions apply with respect to the issuance of Joint Certificates:

A. 'Joint Certificate' is amended to read 'Combined Certificate' in the Binding Authority Agreement to which this endorsement is attached.

B. COMBINED CERTIFICATES:

other Lloyd's Underwriters - \*Permitted / ~~Not permitted~~  
non Underwriting Members of Lloyd's - \*Permitted / ~~Not permitted~~  
*\*(Delete as applicable)*

IDENTITY OF OTHER INSURERS:

All signatories to the QIA being certain Underwriters at Lloyd's of London and various non-Lloyd's insurers

C. For the purposes of the Agreement 'Combined Certificate' is a certificate or other document evidencing insurance accepted under the Agreement and which also evidences a proportion of the insurance accepted for other Lloyd's Underwriters or for insurers which are not Underwriting Members of Lloyd's (hereinafter 'the other insurer(s)');

D. Combined Certificates may be issued under the Agreement, as indicated in B above, provided that in each instance:

D.1 the Underwriters have established the identity of the other insurer(s) which is(are) named in B above;

D.2 the Combined Certificate shall include all the details that are required to be included in insurance documentation evidencing contracts of insurance that are issued by an approved Coverholder under a registered binding authority or by a restricted Coverholder under a restricted binding authority;

D.3 the proportion or amount of risk accepted by the Underwriters is expressly stated on the Combined Certificate and is specified separately from the proportion or amount of risk accepted by the other insurer(s);

D.4 the Combined Certificate must contain the following statement:

**PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY**

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it

has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.'

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LMA5097

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<b>Agreement Number:</b>	FB221/10
<b>Unique Market Reference Number:</b>	B0509QF044010 in respect of Lloyd's underwriters B0397QF044010 in respect of non-Lloyd's market

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**SIGNATURE OF THE COVERHOLDER**

In accordance with Section 1 of LMA3019, the Agreement is signed on behalf of the Coverholder as acceptance of the terms and conditions of the Agreement inclusive of any attachments identified in the Schedule.

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**Signed and accepted on behalf of the Coverholder**

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**Name and Position of Signatory**

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**Date of Signature**

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**ACKNOWLEDGEMENT OF THE UNDERWRITERS**

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**Signed and accepted on behalf of the Underwriters**

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**Date of acknowledgement**

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LMA3019 (Broker) (20/07/06)

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**NON-SCHEDULE AGREEMENTS**

**TAXES PAYABLE BY THE  
INSURED AND  
ADMINISTERED BY THE  
INSURER(S):**

Premium declarations qualifying for UK Insurance Tax (IPT) must be charged at a rate of 5% or as advised by HM Customs and Excise.

**RECORDING TRANSMITTING  
AND STORING INFORMATION:**

Where the Broker maintains risk and claim data/information/documents the Broker will hold data/information/documents electronically.

The Broker will be responsible for maintaining slips and Claims files as Regulations demand.

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**INFORMATION**

Not applicable

**SECURITY DETAILS**

**ORDER HEREON:** 100% of 100%

**BASIS OF WRITTEN LINES:** Percentage of whole

**SIGNING PROVISIONS:** In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (Re)insurers.

However:

- (a) in the event that the placement of the order is not completed by the commencement date of the period of the Binding Authority then all lines written by that date will be signed in full;
- (b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of the Binding Authority, by the documented agreement of the Coverholder and all (Re)insurers whose lines are to be varied. The variation to the Binding Authority will take effect only when all such (Re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.



**CONTRACT ADMINISTRATION  
AND  
ADVISORY  
DETAILS**

**SUBSCRIPTION AGREEMENT**

**SLIP LEADER:**

**SETTLEMENT TERMS:** 90 days from end of bordereau period.

**BASIS OF AGREEMENT  
TO BINDING  
AUTHORITY CHANGES:**

Any amendments to Binding Authority agreement to be agreed by Slip Leader and Bureau Leader (if applicable) only unless otherwise stated on such amendment.

**BINDING AUTHORITY  
ADMINISTRATION:**

Marsh Limited to administer Binding authority in respect of Lloyd's underwriters.

Capita Commercial Insurance Services Limited to administer Binding authority in respect of Non-Lloyd's insurers

**BINDING AUTHORITY  
AGREEMENT  
PRODUCTION:**

Binding authority wording to be produced by Lloyd's Broker and submitted to XIS for signature in respect of Lloyd's Underwriters.

**BASIS OF CLAIMS  
AGREEMENT:**

In accordance with the attached Qualifying Insurer's Agreement

**CLAIMS AGREEMENT  
PARTIES:**

In accordance with the attached Qualifying Insurer's Agreement

**RULES AND EXTENT  
OF ANY OTHER  
DELEGATED CLAIMS  
AUTHORITY:**

In accordance with the attached Qualifying Insurer's Agreement

**EXPERT(S) FEES  
COLLECTION:**

In accordance with the attached Qualifying Insurer's Agreement

**BUREAU(X)  
ARRANGEMENTS:**

XIS agrees to take down and advise premium and related entries appertaining to a single year of account and for this purpose a for declaration only signing number and date may be issued by XIS to establish such year of account.

It is understood and agreed that U.K. Insurance Premium Tax will be signed without the requirement to sign the appropriate premium

**SPECIAL  
ARRANGEMENTS:**

None

**FISCAL AND REGULATORY**

**TAX PAYABLE BY  
INSURER(S):**

Not applicable

**BINDING AUTHORITY  
REGISTRATION DATE  
AND NUMBER :**

Not applicable (Restricted Binding authority)

**ALLOCATION OF PREMIUM  
TO CODING:**

E3

**FSA CLIENT  
CLASSIFICATION:**

Commercial.

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**BROKER REMUNERATION & DEDUCTIONS**

**TOTAL BROKERAGE:** Not applicable

**OTHER DEDUCTIONS  
FROM PREMIUM:** Not applicable

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**APPENDIX A**

**Certificate of Insurance  
INDEMNITY YEAR 2011/2012  
SOLICITORS' COMPULSORY  
PROFESSIONAL INDEMNITY INSURANCE**

THIS IS TO CERTIFY that in accordance with the authorization granted under Contract No: FB221/10 to the undersigned by certain Underwriters at Lloyd's, whose names and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract which bears the Seal of Lloyd's Policy Signing Office, and under Contract No:..... By certain Insurance Companies whose names and the proportions underwritten by them are stated herein (being hereinafter called "Insurers") and in consideration of the premium specified herein, the said Underwriters are hereby bound each for his own part and not one for another, their executors and administrators, and Insurers are bound each for his own part and not for another to insure (as follows:-)(in accordance with the terms and conditions contained herein or endorsed hereon)

	Underwritten	%
<b>NAME OF QUALIFYING INSURER(S)</b>	: Insurers subscribing to the Assigned Risks Pool for the 2011/12 Indemnity year	100%
<b>NAME OF INSURED FIRM OF SOLICITORS</b>	:	
<b>PRINCIPAL ADDRESS OF FIRM</b>	:	
<b>PERIOD OF INSURANCE</b>	: To	(both days inclusive)
<b>POLICY NUMBER OR INSURER REFERENCE</b>	:	
<b>PREMIUM DUE</b>	: £	<b>RUN-OFF PREMIUM</b> £
<b>INSURANCE PREMIUM TAX@ 5%</b>	: £	£
<b>TERMS &amp; CONDITIONS</b>	: AS PER POLICY ATTACHED	

The following additional conditions, clauses, warranties and exclusions shall attach and apply to every insurance bound:-

The parties are free to choose the law applicable to this Insurance Contract.  
Unless specifically agreed to the contrary this insurance shall be subject to English Law.

Where the Coverholder deals with the insured through a retail agent, in respect of any claims referred by the insured to the Coverholder, the Coverholder acts as agent for the Underwriters and not the insured.

**SEVERAL LIABILITY CLAUSE**

**PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY**

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd’s syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member’s proportion. A member is not jointly liable for any other member’s proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd’s, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd’s syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd’s, at the above address.

Although reference is made at various points in this clause to “this contract” in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

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LMA5096 (Combined Certificate)

The name and address to whom the insured should direct all correspondence including claims is Tracey Garrett Capita Commercial Insurance Services Limited (Capita), 40 Dukes Place, London EC3A 7NH. Capita Commercial Insurance Services Limited is authorised and regulated by the Financial Services Authority (FSA)

All complaints should be referred in the first instance to Capita.  
If you are not satisfied with the way a complaint has been dealt with, you may ask the Policyholder and Market Assistance Department at Lloyd’s to review your case without prejudice to your rights in law. The address is:

Policyholder and Market Assistance, Lloyd’s Market Services, One Lime Street, London, EC3M 7HA.  
Telephone 020 7623 7100  
Lloyd’s is regulated by the Financial Services Authority (FSA)

Signed: ..... Date:.....

Print name: Tracey Garrett

For and on behalf of The Assigned Risks Pool Manager - Capita Commercial Insurance Services Limited

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WRITTEN LINES:

**Qualifying Insurer:**

**Signed and accepted on behalf of  
Qualifying Insurer:**

**Participation:**

Participation to be determined in accordance with  
schedule 1, section 3 of the Qualifying Insurers  
Agreement 2011.

**Reference:**

**Date of signature:**



**SIGNED** by ..... )  
..... )  
for and on behalf of **THE LAW SOCIETY OF** )  
**ENGLAND AND WALES** )

.....  
Duly authorised

**SIGNED** by ..... )  
..... )  
for and on behalf of **CAPITA COMMERCIAL** )  
**INSURANCE SERVICES LIMITED** )

.....  
Duly authorised

**SIGNED** by ..... )  
..... )  
for and on behalf of ..... )  
..... )

.....  
Duly authorised