

*For the period 1 December 2015 to 30 November 2016*

**DATED [•] 2015**

**(1) LAW SOCIETY OF IRELAND**

**AND**

**(2) [THE INSURER]**

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**PARTICIPATING INSURERS AGREEMENT**  
**(including the terms on which**  
**Participating Insurers shall participate**  
**in the Special Purpose Fund)**

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**THIS AGREEMENT** is made on the [●] 2015

**BETWEEN**

- (1) **THE LAW SOCIETY OF IRELAND** a body corporate established by Royal Charter and having its principal office at Blackhall Place, Dublin 7 (the “**Law Society**”); and
- (2) [●] (the “**Insurer**”).

**WHEREAS**

- A. The Law Society has made the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2015, as the same may be amended from time to time (hereinafter referred to as the “**Regulations**”).
- B. The Regulations require Firms to establish and maintain professional indemnity insurance incorporating the Minimum Terms and Conditions as and to the extent prescribed by the Regulations with a Participating Insurer that has entered into a Participating Insurers Agreement with the Law Society.
- C. This Agreement establishes the terms and conditions on which the Insurer may provide professional indemnity insurance or coverage incorporating the Minimum Terms and Conditions to Firms.
- D. This Agreement further establishes the terms and conditions on which the Insurer shall participate in the Special Purpose Fund and shall be a Participating Insurers Agreement for the purposes of the Regulations.
- E. This Agreement shall continue in force until such time as a new Participating Insurers Agreement is entered into between the Law Society and the Insurer or until such time as this Agreement is terminated.

**IT IS AGREED AS FOLLOWS:**

**1 INTERPRETATION**

- 1.1 In this Agreement and in the Schedules to this Agreement, unless the context otherwise requires or unless otherwise defined or specified therein, the following terms shall have the following meanings:

“**Acts**” means the Solicitors Acts 1954 to 2011;

“**Actual Proportionate Participation**” has the meaning ascribed to such term in Schedule 2;

“**ARP**” means the Assigned Risks Pool;

“**ARP Coverage**” has the meaning ascribed to such term in the Regulations;

“**ARP Rules**” means the rules concerning the operation and membership of the ARP as published by the PII Committee from time to time;

“**ARP Eligibility Criteria**” has the meaning ascribed to such term in the Regulations;

“**ARP Eligibility Dispensation**” has the meaning ascribed to such term in the Regulations;

“**ARP Eligible Firm**” has the meaning ascribed to such term in the Regulations;

**“ARP Firm”** means a Firm that is insured through the ARP under the terms of an ARP Coverage;

**“ARP Premium”** means the premium determined in accordance with the provisions of Schedule 2;

**“Assigned Risks Pool”** has the meaning ascribed to such term in the Regulations;

**“Authorised Insurer”** has the meaning ascribed to such term in the Regulations;

**“Circumstance”** has the meaning ascribed to such term in the Minimum Terms and Conditions;

**“Claim”** has the meaning ascribed to such term in the Regulations;

**“Claims Information Report”** has the meaning ascribed to such term in clause 8.7;

**“Claims Report”** has the meaning ascribed to such term in clause 8.10;

**“Commencement Date”** means 1 December in the calendar year in which this Agreement is executed on behalf of the parties hereto;

**“Coverage Period”** has the meaning ascribed to such term in the Minimum Terms and Conditions;

**“Defaulting Firm”** has the meaning ascribed to such term in the Regulations;

**“Defaulting Run-off Firm”** has the meaning ascribed to such term in the Regulations;

**“Employee”** has the meaning ascribed to such term in the Minimum Terms and Conditions.

**“Final RPI Statement”** has the meaning ascribed to such term in clause 8.5.2;

**“Firm”** has the meaning ascribed to such term in the Regulations;

**“Indemnity Period”** has the meaning ascribed to such term in the Regulations;

**“Initial RPI Estimate”** has the meaning ascribed to such term in clause 8.5.1;

**“Initial RPI Estimate Statement”** has the meaning ascribed to such term in clause 3.2 of Schedule 2;

**“Insolvency Event”** has the meaning ascribed to such term in the Regulations;

**“Law Society”** means the Law Society of Ireland;

**“Minimum Terms and Conditions”** has the meaning ascribed to such term in the Regulations and as set out in Schedule 1;

**“Non-Performance Event”** has the meaning ascribed to such term in the Regulations;

**“Non-Performing Insurer”** has the meaning ascribed to such term in Schedule 2;

**“Operative Date”** means 1 December 2015;

**“Participating Insurers Agreement”** has the meaning ascribed to such term in the Regulations;

**“Participating Insurers Committee”** has the meaning ascribed to such term in clause 11;

**"Participating Insurer"** has the meaning ascribed to such term in the Regulations;

**"PII Committee"** means the Professional Indemnity Insurance Committee of the Law Society constituted under Regulation 18 of the Regulations;

**"Policy"** means a policy of professional indemnity insurance in compliance with the Minimum Terms and Conditions, made between a Participating Insurer (whether alone or in conjunction with other Participating Insurers) and a Firm;

**"Policy Records"** has the meaning ascribed to such term in clause 12;

**"Practice"** has the meaning ascribed to such term in the Regulations;

**"Proposal Form"** means the proposal form to be determined by the PII Committee and published by the Law Society from time to time;

**"Qualifying Insurance"** has the meaning ascribed to such term in the Regulations;

**"Regulations"** means the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2015 as the same may be amended from time to time;

**"Relevant Premium Income"** has the meaning ascribed to such term in Schedule 2;

**"Risk Management Audit"** has the meaning ascribed to such term in the Regulations;

**"Risk Management Audit Report"** has the meaning ascribed to such term in the Regulations;

**"ROF"** means the Run-off Fund;

**"ROF Rules"** means the rules concerning the operation and membership of the ROF as published by the PII Committee from time to time;

**"Run-off Cover"** has the meaning ascribed to such term in the Regulations

**"Run-off Firm"** has the meaning ascribed to such term in the Regulations;

**"Run-off Fund"** means the run-off fund established pursuant to the Regulations;

**"Special Purpose Fund"** has the meaning ascribed to such term in the Regulations;

**"SPF Manager"** has the meaning ascribed to such term in the Regulations;

**"Supplemental Information"** means information that a Participating Insurer may request from a Firm after submission by the Firm of a completed Proposal Form for the purpose of clarifying information contained in the completed Proposal Form;

**"Terminated Insurer"** means an Insurer whose right to issue Policies to Firms has been terminated by the Law Society pursuant to clause 7;

**"Termination Date"** means the date on which the Insurer's right to issue Policies to Firms is terminated by the Law Society pursuant to clause 7; and

**"Working Day"** has the meaning ascribed to such term in the Regulations.

1.2 In this Agreement and in the Schedules, unless the context otherwise requires or unless otherwise specified:

1.2.1 any reference to any directive, statute, statutory provision or to any order or regulation shall be construed as a reference to that directive, statute, provision, order or

regulation as extended, modified, amended, replaced or re-enacted from time to time (whether before or after the date of this Agreement) and to all directives, statutory instruments, regulations and orders from time to time made thereunder or deriving validity therefrom (whether before or after the date of this Agreement);

- 1.2.2 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
- 1.2.3 all references to recitals, sections, clauses, paragraphs, schedules and annexures are, unless the context clearly indicates to the contrary, to recitals in, sections, clauses and paragraphs of and schedules and annexures to this Agreement;
- 1.2.4 headings are for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.5 words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of this Agreement and not to any particular section, clause or paragraph hereof;
- 1.2.6 in construing this Agreement general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and any reference to the word “include” or “including” is to be construed without limitation;
- 1.2.7 any reference to “Agreement” or any other document or to any specified provision of this Agreement or any other document is to this Agreement, that document or that provision as in force for the time being and as amended from time to time in accordance with the terms of this Agreement or that document;
- 1.2.8 any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;
- 1.2.9 if any action or duty to be taken or performed under any of the provisions of this Agreement would fall to be taken or performed on a day which is not a Working Day such action or duty shall be taken or performed on the Working Day next following; and
- 1.2.10 words and expressions not specifically defined herein shall have the same meaning and shall be construed consistently with meanings ascribed to such terms (if any) in the Acts and the Regulations.

## **2 INSURER TO ISSUE POLICIES**

- 2.1 The Insurer may issue Policies to Firms where such Policies incept at any time on or after the Commencement Date but before the Termination Date on the terms and subject to the conditions set out in this Agreement.
- 2.2 The Insurer may underwrite or provide coverage jointly with other Participating Insurers, provided each such insurer is a Participating Insurer at the date on which the Policy incepts.
- 2.3 Under the terms of any Policy issued to a Firm, the Insurer shall not require the Firm to take out any other policy of insurance with the Insurer or with any other person.

- 2.4 Each Policy issued by the Insurer pursuant to this Agreement shall expire on a date to be agreed between the Insurer and the Firm provided that the Policy shall expire no later than 24 (twenty four) months after the date of inception.

### **3 MINIMUM TERMS AND CONDITIONS**

- 3.1 All Policies issued by the Insurer shall comply at all times with the Minimum Terms and Conditions in force at the date of inception of the relevant Policy.
- 3.2 Where a Policy is extended, renewed or replaced, the extended, renewed or replaced Policy shall comply at all times with the Minimum Terms and Conditions in force at the date of such extension, renewal or replacement.
- 3.3 The Insurer undertakes and agrees that in the event of any inconsistency between any Policy issued to a Firm and the Minimum Terms and Conditions in force at the date of inception, extension, renewal or replacement of the Policy, the Policy shall be construed or (where necessary) rectified so as to comply with the requirements of such Minimum Terms and Conditions, and further undertakes and agrees that any provision of any Policy issued to a Firm which is inconsistent with such Minimum Terms and Conditions shall be severed therefrom or shall be rectified to comply with such Minimum Terms and Conditions.
- 3.4 The Insurer shall issue or shall procure to be issued a confirmation of coverage relating to each Firm the subject of a Policy issued by it in the form attached as Schedule 3 (as the same may be amended by the Law Society from time to time) to the Law Society in respect of each Policy issued by the Insurer within three (3) Working Days of inception, extension, renewal or replacement of the relevant Policy.
- 3.5 The Insurer undertakes and agrees to be bound by any confirmation of coverage issued to the Law Society by any agent, broker or intermediary acting for or on behalf of or in the name of the Insurer, irrespective of any error or omission made by such agent, broker or intermediary in completing or submitting such confirmation of coverage and the Insurer agrees that it shall not instigate any actions or proceedings against the Law Society in an attempt to have such confirmation of coverage set aside or declared invalid or void.
- 3.6 The Insurer shall further issue a certificate of coverage to each Firm the subject of a Policy issued by it promptly following the inception, extension, renewal or replacement of the relevant Policy.

### **4 SPECIAL PURPOSE FUND**

- 4.1 The Insurer agrees to participate in the Special Purpose Fund (“SPF”), including for the avoidance of doubt, the ARP and the ROF which form constituent parts of the SPF, in accordance with the Regulations and in accordance with the terms of this Agreement and in particular (but without limitation) Schedule 2 hereof.
- 4.2 Each party shall fully comply, in each Indemnity Period, with:
- 4.2.1 the ARP Rules and the ROF Rules published by the PII Committee in respect of that Indemnity Period;
  - 4.2.2 any amendments to ARP Coverage formally adopted by the PII Committee in respect of that Indemnity Period pursuant to Regulation 12(b) of the Regulations; and
  - 4.2.3 any amendments to Run-off Cover formally adopted by the PII Committee in respect of that Indemnity Period pursuant to Regulation 5(g) of the Regulations.
- 4.3 The Insurer will accept its proportionate share of all liabilities incurred by the SPF in accordance with the terms of the Regulations and of this Agreement.

- 4.4 Subject to the provisions of Regulation 8(h) of the Regulations, the Insurer further undertakes that, in addition to its liabilities pursuant to clause 4.2 hereof, it shall discharge its proportionate share of any excess or deductible carried by a Firm that has been admitted to the ARP or the ROF in circumstances where that Firm fails to pay the excess or deductible to a claimant.
- 4.5 The Insurer agrees that, where a Firm obtains either ARP Coverage through the ARP or Run-off Cover through the ROF, any interested person may notify a Claim or Circumstance on behalf of that Firm to the SPF Manager and the Insurer shall not dispute the validity of such notification solely on the grounds that it was not made directly by the Firm.
- 4.6 Without prejudice to the provisions of Schedule 2, the Insurer agrees and accepts that ARP Coverage under the ARP shall extend automatically to all Defaulting Firms and agrees to accept its proportionate share of liability in respect of ARP Policies issued to such Defaulting Firms.
- 4.7 A firm which is a Defaulting Run-off Firm shall not be entitled to obtain Run-off Cover from the ROF and shall only be entitled to cover arranged by the SPF manager through the run-off fund under Regulation 6(a) of the Regulations. The Insurer agrees to accept its proportionate share of liability in respect of such cover arranged for Defaulting Run-off Firms.

## **5 CONDUCT OF INSURER**

- 5.1 The Insurer shall act at all times with utmost good faith in the course of its dealings with all Firms which are the subject of Policies issued by it.
- 5.2 The Insurer shall accept a fully completed Proposal Form as a duly completed application for a Policy and shall not require a Firm to complete or submit any other proposal form or application for a Policy.
- 5.3 The Insurer shall not request a Firm seeking a Policy to provide it with Supplemental Information until such time as the Insurer has received and reviewed a Proposal Form fully completed by that Firm. The Insurer shall only request a Firm to provide it with Supplemental Information where the Insurer reasonably requires such information in order to decide whether to insure the Firm.
- 5.4 The Insurer shall not, either in respect of a proposal received from a Firm seeking a Policy or in respect of a proposed extension, renewal or replacement of a Policy, request details of:
- 5.4.1 the amount of premium paid or payable by the Firm to another insurer in respect of a policy of professional indemnity insurance taken out in any previous Indemnity Period; or
- 5.4.2 any quote received by the Firm from another insurer in respect of a policy of professional indemnity insurance for the then current Indemnity Period or any previous Indemnity Period.
- 5.5 No later than ten (10) Working days following the receipt of a fully completed Proposal Form from a Firm seeking a Policy, the Insurer shall respond to the Firm confirming whether the Insurer is willing to insure the Firm and confirming the amount of the premium being sought by the Insurer for such insurance and such quotation shall remain in effect for ten (10) Working days or until the expiry of the previous Coverage Period, whichever date is earlier. When providing such information to the Firm the Insurer shall also provide the Firm with details of any credit rating that it has from any credit rating agency at that time (or in the absence of any such credit rating, a statement to that effect).
- 5.6 If the Insurer requires Supplemental Information from the Firm in order to decide whether to insure the Firm, the Insurer shall make a statement to that effect and request that the Firm provide such Supplemental Information within a reasonable timescale.



5.7 No later than 21 (twenty one) days prior to the end of each Coverage Period the Insurer shall provide to each Firm to which the Insurer is at that time providing a Policy (subject always to the Insurer having been first provided by the Insured with such information as may be reasonably necessary to enable the Insurer to do so), written notice of whether the Insurer will seek to extend, renew or replace such Policy.

5.7.1 If the Insurer is seeking to extend, renew or replace such Policy such notice shall include:

- (a) the amount of the premium, excess and any special terms to apply to such extension, renewal or replacement;
- (b) if the Insurer requires further information from the Insured in order to provide the details required by sub-clause (a) above, subject to clause 5.2, a statement to that effect and a request that the Firm provide such information within a reasonable timescale,

5.7.2 If the Insurer is not seeking to extend, renew or replace such Policy, such notice shall include details of the fact that the Insurer intends not to extend, renew or replace the coverage.

## 6 WARRANTIES REPRESENTATIONS AND UNDERTAKINGS

6.1 The Insurer warrants and represents to the Law Society that it is an Authorised Insurer for the purpose of effecting and carrying out Policies, and such warranty and representation shall be deemed to be repeated on each date upon which this Agreement remains in effect.

6.2 The Insurer undertakes that it will notify the Law Society in writing immediately if, at any time after the date of this Agreement, the warranty set out in clause 6.1 ceases to be accurate in any respect and of the circumstances giving rise to such inaccuracy or if the Insurer is the subject of an Insolvency Event or a Non-Performance Event.

6.3 The Insurer shall 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 such intermediary is acting as agent for the Insurer, and whether it does so on an exclusive basis, irrespective of whether the agent also acts as agent for the Firm.

## 7 TERM

7.1 The Law Society may, by giving notice in writing to the Insurer, at any time terminate forthwith the right granted to the Insurer under this Agreement to issue Policies if:

7.1.1 the Insurer is in fundamental breach of the obligations set out in this Agreement; or

7.1.2 an Insolvency Event or Non-Performance Event occurs in relation to the Insurer; or

7.1.3 the Insurer ceases to be an Authorised Insurer; or

7.1.4 the Insurer is in material breach of its obligations under this Agreement and where such breach is capable of remedy it has failed to do so within such reasonable time as the Law Society has specified,

and an Insurer the subject of such notice shall be a Terminated Insurer.

7.2 Where any notice of termination has been given under clause 7.1, the right granted to the Terminated Insurer to issue Policies under this Agreement shall terminate on the date of that notice or on the date on which the Terminated Insurer ceases to be an Authorised Insurer, whichever occurs earlier.

7.3 The Terminated Insurer shall cease to be a Participating Insurer on the Termination Date, and shall not incept, extend, amend, endorse, renew or replace any Policies after the Termination Date.

7.4 This Agreement shall terminate upon final settlement of all claims made or capable of being made under any Policies issued by the Terminated Insurer hereunder and after the expiry of all relevant periods of limitation under this Agreement, but without prejudice to the rights and obligations of any party under this Agreement as at that date.

## 8 REPORTING

8.1 If, in the course of dealing with any Firm, the Insurer suspects dishonesty or fraud on the part of that Firm or any Principal, partner or Employee of that Firm, and the Insurer, as a result of or in connection with that suspicion:

8.1.1 reserves its position in respect of a claim or any part thereof made by that Firm; or

8.1.2 notifies a Firm that it will not, or intends not to, indemnify that Firm in full in respect of a claim or any part thereof made by that Firm,

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 within five (5) Working Days from the date on which the Insurer takes any of the steps referred to in clauses 8.1.1 to 8.1.2 inclusive, setting out the nature of its suspicion and the steps that it has taken as a result of that suspicion, and shall provide such further information relating to the claim and the Firm concerned as the Law Society may reasonably require from time to time to facilitate the Law Society in investigating such suspected dishonesty or fraud.

8.2 The Insurer shall (without prejudice to its obligations under clause 3.4) within ten (10) Working Days of any request in that regard being made in writing by the Law Society from time to time, provide or procure to be provided to the Law Society confirmation in writing that:

8.2.1 a specified Firm has taken out a Policy issued by that Insurer;

8.2.2 a full list of all Firms in respect of which the Insurer has issued a Policy covering that Indemnity Period or any part thereof;

8.2.3 confirmation that any such Policy as is mentioned in clause 8.2.2 is in force or was in force on a particular date; and

8.2.4 confirmation that any such Policy as is mentioned in clause 8.2.2 complies with the Minimum Terms and Conditions in force on the date on which such Policy incepted or was renewed, as the case may require.

8.3 The Insurer shall provide to the Law Society on the date of this Agreement the information set out in Schedule 4 hereof, such information to be true and accurate as at the date of this Agreement. The Insurer shall notify the Law Society of any changes to the information provided to the Law Society pursuant to this clause 8.3 within five (5) Working Days of the change taking effect.

8.4 The Insurer shall provide to the Law Society such other information as the Law Society may reasonably require from time to time in order for the Law Society:

8.4.1 to assess whether the Insurer is complying with its obligations under this Agreement; and

8.4.2 to exercise its regulatory functions,

(such information to include, for the avoidance of doubt, but not be limited to, data relating to the categories of claims in respect of civil liability incurred by solicitors insured by the Insurer

and arising from their practice as solicitors where the Law Society requires such data to provide to the solicitors profession as a whole advice relating to risk management) and the provisions of clause 18 shall apply in respect of any information provided in accordance with this clause 8.

- 8.5 Each Participating Insurer shall provide to the SPF Manager:
- 8.5.1 on or before 31 January in each Indemnity Period an interim statement of its estimated Relevant Premium Income (the “**Initial RPI Estimate**”) for that Indemnity Period; and
  - 8.5.2 within 15 (fifteen) Working Days of the end of each Indemnity Period in respect of which it was a Participating Insurer for the whole or any part thereof, a final statement of its actual Relevant Premium Income (the “**Final RPI Statement**”) for that Indemnity Period.
- 8.6 The Insurer shall provide the following information, in a format consistent with a template report to be published by the Law Society for such purposes from time to time, to an independent firm of accountants (nominated for such purpose by the Law Society and notified in writing to the Insurer) on or before 30 June in each Indemnity Period:
- 8.6.1 in respect of each Policy issued by the Insurer in that Indemnity Period, details of the amount of the premium paid or payable to the Insurer and the number of partners in the Firm to which the Policy was issued; and
  - 8.6.2 the total amount of premium paid or payable to that Insurer in respect of Policies issued in that Indemnity Period;
  - 8.6.3 the total number of claims notified to the Insurer in that Indemnity Period in respect of Policies issued in that Indemnity Period; and
  - 8.6.4 the total amount paid by the Insurer in respect of claims relating to Policies issued in that Indemnity Period; and
  - 8.6.5 the outstanding claims loss reserves held by the Insurer in respect of Policies issued in that Indemnity Period,
- referred to herein as “**Claims Information**”.
- 8.7 The Claims Information provided by the Insurer to the independent firm of accountants under clause 8.6 shall be produced pursuant to a confidentiality agreement agreed between the independent firm of accountants and the Law Society for the benefit of the Insurer which shall oblige the independent firm of accountants to maintain the confidentiality of the information received from the Insurer and to destroy or delete such information within a reasonable period following the delivery of the Claims Information Report to the Law Society.
- 8.8 The independent firm of accountants referred to in clause 8.6 shall furnish a report (the “**Claims Information Report**”) containing the aggregated Claims Information received from all Participating Insurers in respect of an Indemnity Period no later than 31 July in that Indemnity Period. The Claims Information Report shall not disclose the identity of any Insurer, Firm, Principal of any Firm or Employee of any Firm.
- 8.9 The Insurer shall be obliged to comply with its obligations under clause 8.6 even where it is no longer a Participating Insurer. The Insurer shall continue to provide the Claims Information referred to in clause 8.6 to the Law Society (in the manner described in clause 8.6) in respect of each previous Indemnity Period (provided that such Indemnity Period commenced on or after the Operative Date) on 30 June in each year. Such Claims Information shall set out, as at the date specified therein, the information referred to in clause 8.6.2 in respect of the Indemnity Period to which it refers.

- 8.10 The Insurer shall provide a report (a “**Claims Report**”) to any Firm to which it has issued a Policy, either in the then current Indemnity Period or in any previous Indemnity Period, within ten (10) Working Days of receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:
- 8.10.1 a summary of each claim of which the Insurer is aware made against the Firm under each Policy;
  - 8.10.2 the amount reserved by the Insurer against each claim;
  - 8.10.3 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);
  - 8.10.4 whether or not each such amount includes defence costs;
  - 8.10.5 whether each such amount includes or is in excess of the amount of any excess or deductible that may apply in relation to such claim, and the amount of any such excess or deductible; and
  - 8.10.6 any amounts paid out in relation to each claim, in each case indicating whether such sums include any excess or deductible due from but not paid by the firm.
- 8.11 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 8.10, 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.

## 9 **CLAIMS**

- 9.1 The Insurer shall handle claims within a timeframe and in a manner to be reasonably expected of a prudent insurer operating in the Irish professional indemnity insurance market.
- 9.2 The Insurer must have in place a written procedure for the effective and proper handling of Claims. At a minimum, the procedure must provide that:
- 9.2.1 Where a claim form is required to be completed, it is issued to the Firm within five business days of receiving notice of a Claim;
  - 9.2.2 The Insurer must offer to assist in the process of making a Claim, including, where relevant, alerting the Firm, or its representatives, to policy terms and conditions that may be of benefit to the Firm;
  - 9.2.3 A record must be maintained of all conversations with the Firm in relation to the Claim; and
  - 9.2.4 The Insurer must, while the Claim is ongoing, provide the Firm with updates of any developments affecting the outcome of the Claim within ten business days of the development. When additional documentation or clarification is required from the Firm, the Firm must be advised of this as soon as required and, if necessary, issued with a reminder on paper or on another durable medium.
- 9.3 The Insurer shall pay claims without avoidable delay after liability under the Policy has been established and the amount payable by the Insurer has been agreed.
- 9.4 The Insurer shall only be entitled to treat any Policy as void, repudiated, terminated, or otherwise ineffective or refuse to pay any claim, by reason of any act or omission on the part of any Firm or any person acting for or on behalf of or as agent for that Firm in circumstances where such course of action is explicitly permitted in accordance with the Minimum Terms and Conditions.

9.5 Clause 9.4 shall be without prejudice to any rights of reimbursement that the Insurer may have under the terms of any Policy against a Firm or any insured by reason of any such act or omission as is referred to in clause 9.4.

## 10 VARIATION

10.1 The Law Society may from time to time, following consultations in that regard with the Participating Insurers Committee, amend the Regulations, or vary the terms of the Minimum Terms and Conditions or of this Agreement, provided that any such variation shall be effective from the start of the next Indemnity Period following the Indemnity Period in which such variation was made.

10.2 Each Participating Insurer shall be notified in writing of each such variation no later than two (2) months before the inception of such variation.

## 11 PARTICIPATING INSURERS COMMITTEE

11.1 The Law Society shall ensure that the PII Committee shall establish a committee (the "**Participating Insurers Committee**"), the remit and terms of reference of which shall be decided in consultation with Participating Insurers but shall include the periodic appraisal of the arrangements regarding the provision of Policies to members of the solicitors' profession generally and to consider any necessary amendments to those arrangements.

11.2 Membership of the Participating Insurers Committee shall be made up of representatives of the Participating Insurers participating in the market and such other persons as the PII Committee shall nominate in its absolute discretion, save that at all times, the Participating Insurers shall have a majority of members on the Participating Insurers Committee.

## 12 RIGHT OF INSPECTION

The Insurer shall maintain records in respect of each Policy ("**Policy Records**") until final settlement of all claims made under that Policy and the expiry of all relevant periods of limitation in respect of that Policy. The Law Society shall be entitled to have access to any Policy Records of the Insurer at all times on reasonable notice during normal business hours.

## 13 PUBLICATION OF DETAILS

13.1 Notwithstanding clause 18, the Law Society may publish to Firms and the public generally the names of those Participating Insurers participating in the market for professional indemnity insurance for solicitors from time to time.

13.2 Notwithstanding clause 18, the Insurer acknowledges and agrees that the Law Society shall be entitled, at its sole discretion, to make an executed copy of this Agreement available to any person.

13.3 Notwithstanding clause 18, the SPF Manager may provide to each Participating Insurer participating in the market for professional indemnity insurance for solicitors, details of the market share of each other Participating Insurer participating in that market from time to time.

13.4 Notwithstanding clause 18, the Law Society may make available to the public, at its sole discretion, details of the aggregate premiums paid by all Firms to all Participating Insurers in respect of any Indemnity Period commencing on or after 1 December 2015 (the "**Aggregate Premium Amount**"). The Aggregate Premium Figure shall be a single amount only and shall not disclose the identity of any Firm or Participating Insurer or the amount of any premium paid by any Firm or received by any Participating Insurer in any Indemnity Period.

## 14 DISPUTES AS TO INSURERS OR COVERAGE

14.1 The Insurer shall adhere to any rules (or part thereof) regulating the conduct of coverage disputes issued by the PII Committee under Regulation 18(h) of the Regulations and the

Insurer hereby acknowledges that any such rules shall be binding on the Insurer immediately upon such rules being made by the PII Committee and the Insurer shall take steps at its own expense to comply with any such rules.

14.2 Where a dispute arises between the Insurer and any other Participating Insurer as to whether a particular claim is properly payable under a Policy issued by the Insurer where the Insurer has issued a confirmation of coverage as required by clause 3.4, the Insurer shall conduct that claim, advance defence costs and if appropriate compromise and pay such claim in the normal course.

14.3 The Insurer agrees that the dispute shall be submitted to arbitration in accordance with clause 15 (but with the arbitrator being required to be a solicitor or member of the Irish Bar with experience of professional indemnity matters) and shall be heard in conjunction with any other related dispute between the other relevant parties thereto in a single arbitration hearing.

## 15 **DISPUTES**

15.1 A 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 (twenty one) days of a written notification being made by one (1) of the parties to the arbitration, by the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch).

15.2 Every or any reference made pursuant to clause 15.1 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any Act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

15.3 In the event of the arbitrator being unable or unwilling to act as such, any replacement arbitrator shall be appointed in a like manner to that stipulated in clause 15.1.

## 16 **RELATIONSHIP BETWEEN THIS AGREEMENT AND PRIOR AGREEMENTS**

Where the Insurer has previously participated in the Assigned Risks Pool or the Special Purpose Fund in respect of any Indemnity Period prior to 1 December 2015 and in connection therewith entered into a Participating Insurers Agreement or other similar agreement, the Insurer hereby agrees that the Insurer's entry into this Agreement or other similar agreement shall be without prejudice to any rights or obligations of any party pursuant to the Participating Insurers Agreement or other similar agreement in respect of any such prior Indemnity Period and the relevant Participating Insurers Agreement or other similar agreement shall continue in full force and effect in respect of such rights and obligations.

## 17 **ASSIGNMENT**

Neither this Agreement, nor any interest in it shall be assignable by the Insurer in whole or in part to any person except with the written agreement of the Law Society.

## 18 **CONFIDENTIALITY**

18.1 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.

18.2 In circumstances where matters are reported or information is provided to the Law Society for the purposes of this Agreement, the Law Society shall not (except to the extent that this is 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 other person engaged in any capacity by the Law Society to advise or assist it in respect of the exercise of its regulatory functions, and 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.

18.3 Each party agrees that the provisions of this clause 18 shall extend to meetings of the Participating Insurers Committee and/or the PII Committee including for the avoidance of doubt and without limitation, any information disclosed during the said meetings and any materials distributed or reviewed prior to, during or subsequent to the meetings.

18.4 The provisions of clause 18.1 shall not prevent the Law Society from making use of any information referred to in that clause for the purpose of bringing disciplinary proceedings against any person or Firm.

**19 ENTIRE AGREEMENT**

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, or any person acting for or on its behalf.

**20 COUNTERPARTS**

This Agreement may be entered into in the form of two (2) counterparts each executed by one (1) of the parties but, taken together, executed by both and, provided that the parties so enter into the Agreement, the executed counterparts, when duly executed or delivered, shall be deemed to be an original, but, taken together, they shall constitute one (1) instrument.

**21 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of Ireland and any disputes arising under or in connection with it shall be subject to the jurisdiction of the Irish courts save where specifically referred to arbitration hereunder.

**22 NOTICES**

22.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by post or by fax as follows:

22.1.1 The Insurer, at:

.....  
.....

Fax Number

For the attention of:

22.1.2 The Law Society, at Blackhall Place, Blackhall Place, Dublin 7

Fax Number 00 353 1 879 8795

For the attention of Mr. John Elliot; and

22.1.3 The SPF Manager at:

Triton Claims, International Corporate Centre, 92/93 Stephen's Green, Dublin 2, Ireland.

Fax number: 00353 (0) 1 4283301

For the attention of: Aidan Leonard

or 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 22.

**22.2 Notice Deemed to be Served**

Any notice or communication referred to in clause 22 shall be deemed to have been given:

- (a) if delivered by hand, on delivery;
- (b) if sent by facsimile, when the sender's facsimile machine issues confirmation that the relevant pages have been transmitted to the recipient's facsimile machine; and
- (c) if sent by prepaid post, 48 (forty-eight) hours after posting,

provided in each case that the deemed day is a Working Day. If notice or communication is given in accordance with sub-clause (a), (b) or (c) above on a day which is not a Working Day then that notice or communication will not be deemed given until the next Working Day thereafter.

- 22.3 In proving the giving of a notice under this clause 22, 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 to the relevant number.



**EXECUTION PAGE**

**IN WITNESS** of which this Agreement has been duly executed by the parties hereto on the date first appearing above

Present when the Common Seal of  
**THE LAW SOCIETY OF IRELAND**  
was affixed hereto:-

Present when the Common Seal of  
**[Insert Name of Participating Insurer]**  
was affixed hereto:-

## SCHEDULE 1

### Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered Lawyers in Ireland

#### 1 INTERPRETATION

##### 1.1 In these terms and conditions, the following expressions shall have the following meanings:—

**“Amount Insured”** means the limit of liability of each Insurer under the Insurance, including, for the avoidance of doubt, the aggregate limit of liability of all Insurers where the coverage is provided on the basis of co-insurance;

**“Authorised Insurer”** means an insurer that holds an authorisation to carry on insurance business for the purposes of Directive 73/239/EEC or that is otherwise entitled to carry on non-life insurance business in the State;

**“Circumstance”** means an incident, fact, occurrence, matter, act or omission that may give rise to a Claim in the context of civil liability;

**“Claim”** means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:—

- (a) civil compensation of any nature,
- (b) civil damages of any nature, or
- (c) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2011 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time, but for the avoidance of doubt, the term “Claim” does not include any claim for payment of costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) of this definition where the Insurance, in accordance with the Minimum Terms and Conditions, excludes the Insurer’s liability to indemnify the Insured in respect of such costs;

**“Claimant”** means a person or entity that has made or may make a Claim (including a Claim for contribution or indemnity);

**“Commercial Property Regulations”** means the Solicitors (Professional Practice, Conduct and Discipline — Commercial Property Transactions) Regulations 2010;

**“Coverage Period”** means the period for which the Qualifying Insurance or the ARP coverage (as the case may be) held by a Firm affords cover;

**“Defence Costs”** mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in relation to a Claim including without limitation the costs of:—

- (a) defending any proceedings, or
- (b) conducting any proceedings for indemnity, contribution or recovery,

or

(c) investigating, reducing, avoiding or compromising any actual or potential Claim;

but the term “Defence Costs” does not include:—

- (i) any internal overhead expenses of the Firm or the Insurer or the cost of any Insured’s time, or
- (ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) under the definition of “Claim” where the Insurance, in accordance with the Minimum Terms and Conditions, excludes the Insurer’s liability to indemnify the Insured in respect of such costs;

“**Direction**” shall have the meaning ascribed to it in clause 8.3;

“**Employee**” means any person, other than a Principal, employed or otherwise engaged in the Firm’s Practice, including, without limitation, solicitors, registered lawyers, other lawyers, trainee solicitors, consultants, associates, locum staff members, persons seconded to work in the Firm’s Practice or persons seconded by the Firm to work elsewhere, office and clerical staff or otherwise;

“**Financial Institution**” means any of the following:—

- (a) a credit institution as defined in section 2(1) of the 1995 Act,
- (b) a credit institution that is the holder of an authorisation for the purposes of Article 3(1) of Directive 2013/36/EU,
- (c) a retail credit firm authorised pursuant to section 31 of the 1997 Act,
- (d) a home reversion firm authorised pursuant to section 31 of the 1997 Act,
- (e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person,
- (f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA, but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

“**Firm**” means:—

- (a) any Partnership of two (2) or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such Partnership includes at least one (1) solicitor or registered lawyer and whether or not such Partnership includes non-registered lawyers, and
- (b) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer; where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

**"Firm's Practice"** means the practice carried on by the Firm, and includes the business of any trustee, nominee, service or administration company owned by the Principals of the Firm;

**"Insurance"** means the professional indemnity insurance or coverage required by each Firm pursuant to the Regulations;

**"Insured"** means, in respect of a Firm:—

- (a) the Firm,
- (b) each trustee, nominee, service or administration company owned by the Firm and/or the Principals of the Firm from time to time,
- (c) each director, officer or employee of any such company as is referred to in paragraph (b) above from time to time,
- (d) each Principal or former Principal of the Firm from time to time, (e) each Employee or former Employee of the Firm from time to time, or
- (e) the estate or legal personal representatives of any deceased former Principal or Employee of the Firm;

**"Insurer"** means the underwriter of the Insurance or the provider of the coverage the subject of the Minimum Terms and Conditions;

**"Investment Advice"** has the meaning ascribed to such term in the Regulations;

**"Investment Business Service"** has the meaning ascribed to such term in the Regulations;

**"Law Society"** means the Law Society of Ireland;

**"Lead Insurer"** means the Insurer named as such in the contract of Insurance but if contrary to clause 3.6.2 no Lead Insurer is named as such, means the first-named Insurer on the relevant certificate of insurance;

**"Legal Services"** means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):-

- (a) any Investment Business Services or Investment Advice provided by a Firm,
- (b) acting as personal representative or trustee,
- (c) acting as notary public,
- (d) acting as a commissioner for oaths,
- (e) acting as liquidator or receiver,
- (f) acting as company secretary,
- (g) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
- (h) acting as arbitrator or mediator,
- (i) acting on a pro bono basis, and

(j) acting as Personal Insolvency Practitioner.

**“Minimum Terms and Conditions”** means the minimum terms and conditions set out in Appendix 1 to the Regulations with which a Qualifying Insurance (or, in the case of a Qualifying Insurance provided as a coinsurance, any part thereof) underwritten by a Participating Insurer is required by these Regulations to comply, or in the case of ARP coverage and run-off cover, such minimum terms and conditions, as varied by or pursuant to these Regulations, to apply in respect of such cover;

**“Misconduct”** has the meaning ascribed to such term in the Regulations;

**“NAMA”** means the National Asset Management Agency;

**“Participating Insurer”** means, in respect of an Indemnity Period, an Authorised Insurer which has entered into and duly executed a Participating Insurers Agreement with the Law Society on or before 1 November immediately prior to the commencement of that Indemnity Period and which is effective to permit such Insurer to underwrite Qualifying Insurance;

**“Participating Insurers Agreement”** means an agreement in such terms as the PII Committee may from time to time designate setting out the terms and conditions on which a Participating Insurer may provide Qualifying Insurance to Firms in the State and the terms on which such Participating Insurer shall participate in the Special Purpose Fund;

**“Partner”** means a partner in a Firm;

**“Partnership”** means an unincorporated firm;

**“Personal Insolvency Practitioner”** has the meaning ascribed to such term in the Personal Insolvency Act 2012;

**“Policy”** means a contract of professional indemnity insurance made between a Participating Insurer (whether alone or in conjunction with other participating insurers) and a Firm, and **“Policies”** shall be construed accordingly;

**“Practice”** means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of Legal Services from an establishment in the State and where such Legal Services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

**“Preceding Practice”** means each Practice:

- (a) which has ceased practice; and
- (b) to which the Firm’s Practice is a Succeeding Practice;

**“Principal”** means:—

- (a) the sole practitioner of any Firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers,
- (b) every Partner of a Firm and every person held out as a Partner of a Firm that during any indemnity period carries on or carried on business as a Partnership;

**“Regulations”** means The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014, as the same may be amended from time to time;

**“Qualifying Insurance”** means a Policy or Policies of insurance which (in the case of a single such Policy) includes the relevant Minimum Terms and Conditions or (in the case of a number of Policies) taken together include the Minimum Terms and Conditions in effect at the date of inception, extension, renewal or replacement of the Policy or Policies of insurance;

**“Self-Insured Excess”** means an amount that the Insured is required by the terms of any contract between the Insured and the Insurer to pay to the Claimant in the event of a Claim;

**“Special Purpose Fund”** has the meaning ascribed to it in the Regulations;

**“Succeeding Practice”** means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):—

- (a) it is held out as being a successor to the practice or part thereof of the Preceding Practice by whatever means such holding out occurs, or
- (b) it is conducted by a Partnership where half or more of the Principals are identical to those persons who were Principals of any Partnership that conducted the Preceding Practice, or
- (c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice, or
- (d) it is conducted by a sole practitioner who was one of the Principals conducting the Preceding Practice, or
- (e) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice, or
- (f) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice,

but notwithstanding the foregoing a practice shall not be treated as a Succeeding Practice for the purposes of the Minimum Terms and Conditions pursuant to paragraphs (b), (c), (d), (e) or (f) of this definition if another practice is or was held out by the owner of that other practice as the Succeeding Practice;

**“the 1995 Act”** means the Consumer Credit Act 1995 (as amended);

**“the 1997 Act”** means the Central Bank Act 1997 (as amended);

**“Working Day”** means every day, not including a Saturday, Sunday or public holiday, on which banks generally are open for the transaction of normal banking business in the State.

**1.2 In these Minimum Terms and Conditions, unless the context otherwise requires:—**

- (a) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014;
- (b) the Interpretation Act 2005 shall apply for the purpose of interpreting these Minimum Terms and Conditions as it applies to the interpretation of an act of the Oireachtas,

except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2011 or with these Minimum Terms and Conditions;

- (c) a reference in these Minimum Terms and Conditions to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:—
  - (i) any subordinate legislation 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, at or after the date of commencement of these Minimum Terms and Conditions;
- (d) the singular includes the plural, and vice versa;
- (e) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
- (f) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;
- (g) references to a “company” include any body corporate;
- (h) headings are inserted for convenience only and shall not affect the interpretation of these Minimum Terms and Conditions; and
- (i) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

## **2 SCOPE OF COVER**

### **2.1 The Insured**

The person insured under each Insurance must include, and coverage under the Insurance as joint insureds must extend to, all those persons and entities set out in clause 1 under the definition of “Insured”.

### **2.2 Civil Liability**

The Insurance must indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services provided that:—

- (a) a Claim in respect of such civil liability is:
  - (i) first made against the Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and:

- (i) arises from Circumstances first notified to the Insurer during the Coverage Period;  
or
- (ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

## 2.3 Continuous Coverage

### Historic claims

2.3.1 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.2, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where:

- (a) a Claim in respect of such liability:
  - (i) is first made against the Insured during the coverage period (the "Relevant Period") of a professional indemnity insurance policy (the "Relevant Policy") held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
  - (ii) is first notified to the Insurer during the Coverage Period;
- (b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Claim to the Insurer; and
- (c) the Claim would have been covered by the Relevant Policy,

such a Claim to be referred to herein as an "Historic Claim".

2.3.2 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of an Historic Claim where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of the Historic Claim.

### Limit of liability

2.3.3 The liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.1 shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.4 In the case of co-insurance, the liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.2 shall not exceed the lesser of the Insurer's proportion of the limit of liability of the Insured under the Insurance and the Insurer's proportion of the limit of liability of the Insured under the Relevant Policy.

### Self-insured excess

2.3.5 Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of an Historic Claim referred to in clause 2.3.1 shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.



### **Historic circumstances**

2.3.6 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.7, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where a Claim in respect of such liability is first made against the Insured during or after the Coverage Period and:

- (a) arises from Circumstances which:
  - (i) the Insured first became aware of, or ought reasonably to have become aware of, during the Relevant Period of the Relevant Policy held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
  - (ii) are first notified to the Insurer during the Coverage Period;
- (b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Circumstances to the Insurer; and
- (c) the Claim would have been covered by the Relevant Policy,

such Circumstances to be referred to herein as “Historic Circumstances”.

2.3.7 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of a Claim arising from Historic Circumstances where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of that Claim.

### **Limit of liability**

2.3.8 The liability of an Insurer in respect of any one Claim referred to in clause 2.3.6 arising from Historic Circumstances shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.9 In the case of co-insurance, the liability of an Insurer in respect of any one Claim referred to in clause 2.3.7 arising from Historic Circumstances shall not exceed the lesser of the Insurer’s proportion of the limit of liability of the Insured under the Insurance and the Insurer’s proportion of the limit of liability of the Insured under the Relevant Policy.

### **Self-insured excess**

2.3.10 Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of a Claim referred to in clause 2.3.6 arising from Historic Circumstances shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.

## **2.4 Defence Costs**

The Insurance must indemnify the Insured against Defence Costs in relation to:—

- (a) any Claim referred to in clauses 2.2, 2.5 and 2.6; and

- (b) any Circumstance referred to in clauses 2.2, 2.5 and 2.6, and the Insurance shall provide that such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

## 2.5 **Preceding Practice**

2.5.1 The Insurance must indemnify each Insured against civil liability to the extent that such liability arises from any provision of Legal Services in connection with a Preceding Practice, provided that:—

- (a) a Claim in respect of such liability is:
  - (i) first made against an Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and:
  - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
  - (ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.5.2 For the purposes of such cover as is contemplated in clause 2.5, the Insurance must include:—

- (a) each Partnership or sole practitioner who carried on the Preceding Practice;
- (b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;
- (c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;
- (d) each Principal and former Principal of any Partnership referred to in paragraph (a);
- (e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and
- (f) the estate or legal personal representatives of any person referred to in this clause 2.5.2 who is deceased or legally incapacitated.

2.5.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Preceding Practice provided pursuant to this clause 2.5, but the Insurance may not provide that the Insurer can decline to indemnify the Insured or cancel, terminate or avoid the Insurance due to non-payment of any such additional premium when due.

## 2.6 **Succeeding Practice**

2.6.1 Where there is a Succeeding Practice to the Firm's Practice the Insurance must indemnify each Insured against civil liability arising from any provision of Legal Services in connection with a Succeeding Practice to the Firm's Practice, provided that:—

- (a) a Claim in respect of such liability is:
  - (i) first made against an Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is made during or after the Coverage Period and:
  - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
  - (ii) arises from circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.6.2 For the purposes of such cover as is contemplated in this clause 2.6 the Insurance must include:—

- (a) each Partnership or sole practitioner who carries on the Succeeding Practice;
- (b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;
- (c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;
- (d) each Principal and former Principal of any Partnership referred to in paragraph (a);
- (e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and
- (f) the estate or legal personal representatives of any person referred to in this clause 2.6.2 who is deceased or legally incapacitated.

2.6.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Succeeding Practice provided pursuant to this clause 2.6, but the Insurance may not provide that the Insurer can decline to indemnify the Insured or cancel, terminate or avoid the Insurance due to non-payment of any such additional premium when due.

## 3 **MINIMUM LEVEL OF INSURANCE COVER**

### 3.1 **Minimum Level of Cover**

The Amount Insured for each and every Claim (exclusive of Defence Costs) must be at least €1,500,000 (one million five hundred thousand euro).

### **3.2 Cover for Defence Costs**

There must be no limit on the cover for Defence Costs.

### **3.3 Proportionate liability for Defence Costs**

The Insurance may provide that liability for Defence Costs in relation to a Claim that exceeds the Amount Insured is limited to the proportion of such Defence Costs that the Amount Insured bears to the total amount paid or payable to dispose of that Claim.

### **3.4 No retrospective dates**

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 that occurred prior to any specified date.

### **3.5 No other limits**

The Insurance may not apply any monetary exclusions or limits except as provided for by clauses 3.1 and 3.3 and where the Insurance is underwritten on a co-insurance basis, to the extent provided for in clause 3.6.2. For the avoidance of doubt, this clause 3.5 shall not be construed to prevent an Insured and an Insurer from agreeing that the cover shall provide for a Self-Insured Excess where this is otherwise permitted under these Minimum Terms and Conditions.

### **3.6 Co-insurance**

3.6.1 The Insurance may be underwritten by more than one (1) Insurer, each of which must be a Participating Insurer and the Insurance may in such circumstances provide that the Insurer shall be severally liable only for its respective proportion of liability in accordance with the terms of the Insurance and shall state the respective proportions of liability of each of the relevant Participating Insurers.

3.6.2 Where the Insurance is underwritten jointly by more than one (1) Insurer, the Insurance must state which Participating Insurer shall be the Lead Insurer and in addition to any proportionate limit of Defence Costs in accordance with clause 3.3, the Insurance may provide that each Insurer's liability for Defence Costs is further limited to the extent of the proportion of that Insurer's liability (if any) in relation to a relevant Claim.

## **4 SELF-INSURED EXCESSES**

### **4.1 Self-Insured Excess**

The Self-Insured Excess (if any) applicable to the Insurance is a matter of contract to be determined between the Insurer and the Firm in each case.

### **4.2 Effect of Self-Insured Excess**

4.2.1 The Insurance must provide that the Self-Insured Excess does not reduce or limit the liability of the Insurer contemplated by clause 3.1.

4.2.2 The Self-Insured Excess must not apply to Defence Costs.

4.2.3 The Insurance may provide for multiple Claims to be treated as one (1) Claim for the purposes of the Self-Insured Excess on such terms as the Insurer and the Firm may agree.

4.2.4 In the case of Insurance written on an excess of loss basis, there shall be no Self-Insured Excess except in relation to the primary layer.

#### 4.3 **Payment of Self-Insured Excess to Claimant**

In the event that an amount which is within the Self-Insured Excess is not paid by a Firm to a Claimant within 30 (thirty) Working Days of its becoming due, the Insurer must redress the default on the part of the Firm and make payment thereof to the Claimant, and in such circumstances, the Insurance may provide that the Insurer shall be entitled to recover any amount so paid from the Firm.

### 5 **SPECIAL CONDITIONS**

#### 5.1 **Minimum Terms and Conditions must prevail**

5.1.1 The terms and conditions of the Insurance must comply with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

5.1.2 Any provision of the Insurance that is inconsistent with the Minimum Terms and Conditions shall either be severed from the terms of the Insurance or the Insurance shall be rectified so as to comply with the Minimum Terms and Conditions.

5.1.3 The Insurance must provide that the Minimum Terms and Conditions shall always prevail in the event of a conflict between the terms and conditions of the Insurance and the Minimum Terms and Conditions.

#### 5.2 **No cancellation**

5.2.1 The terms of the Insurance must provide that the Insurance or coverage cannot be cancelled unless:

- (a) the Firm's Practice is merged into a Succeeding Practice provided that the Succeeding Practice has Insurance in compliance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations, or
- (b) replacement Insurance complying with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations commences (but only where any replacement Insurance is not or would not in the event of cancellation of the original Insurance be provided wholly or partly by the Special Purpose Fund).

5.2.2 The terms of the Insurance must further provide that any cancellation must not prejudice the accrued rights and obligations of the parties thereto as at the effective date of cancellation.

#### 5.3 **No avoidance or repudiation**

Without prejudice to clause 6.17, the Insurance must provide that the Insurer is not entitled to avoid or repudiate the Insurance on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

#### 5.4 **Rights of Insurer**

5.4.1 Without prejudice to clause 5.3, the Insurance may provide that the Insurer is entitled to recover any outstanding premium or additional premium amounts from the Firm in any

circumstance where (but for the operation of clause 5.3) the Insurer would have been entitled to avoid or repudiate the Insurance.

5.4.2 The Insurance may further provide that, in any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with a placement or renewal of Insurance for a Firm, the Insurer may refer the conduct of any relevant Principal of that Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2011 or otherwise.

#### 5.5 **No set-off**

The Insurance must provide:—

(a) that any indemnity amount payable to the Insured by the Insurer must be paid only to the relevant Claimant or as the Claimant may direct,

and

(b) that the Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured, including, without limitation, any payment of premium due to, or any payment required to be made by the Insured to reimburse, the Insurer.

#### 5.6 **No other policy to bar recovery**

Save to the extent permitted under clause 6.4, the Insurance must provide that no rights of recovery available to a Firm under another policy of insurance may bar recovery under the Insurance.

#### 5.7 **Contribution where Succeeding Practice exists**

Where there is a Succeeding Practice in relation to the Firm's Practice during the Coverage Period, and as a result more than one (1) Qualifying Insurance covers a Claim or Circumstance, the Insurance may provide that contribution between Insurers shall be determined in accordance with the relative numbers of Principals of the owners of the respective constituent practices immediately prior to the relevant succession.

#### 5.8 **No denial or reduction**

Subject to clause 2.2, the Insurer shall not on any grounds whatsoever, including but not limited to the following:—

(a) any failure to notify a Claim or Circumstance within a prescribed period, or

(b) any breach of any term or condition of the Insurance, or

(c) any failure to pay any part of the premium in relation to the Insurance be entitled to reduce or deny its liability under the Insurance, except in circumstances where a prescribed exclusion contemplated by clause 6 applies.

#### 5.9 **Coverage Period**

The Coverage Period must run from the date of inception of the relevant Insurance and must expire no later than 24 months from the date of inception of the relevant Insurance.

#### 5.10 **Contesting Liability**

A Firm or an Insured shall not be required against its wish to contest the issue of liability in any legal or arbitration proceedings arising from any Claim unless a solicitor or a member of the Irish Bar (as mutually agreed upon between the Firm and the relevant Insurer, or failing agreement, to be appointed by the Chairman of the Bar Council of Ireland) shall advise that such proceedings or arbitration should be contested.

### 6 **EXCLUSIONS**

#### 6.1 **No other exclusions**

The Insurance must not exclude or limit the liability of the Insurer on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one (1) or a number of the matters set out in this clause 6.

#### 6.2 **Death or bodily injury**

The Insurance may exclude all and any liability of any Insured for causing death or bodily injury, save that the Insurance must cover liability for psychological injury or emotional distress (including but not limited to stress-related claims).

#### 6.3 **Property**

The Insurance may exclude liability of the Insurer to indemnify for any act or omission which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

#### 6.4 **Previous cover**

The Insurance may exclude liability in respect of Claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be indemnified in respect of the same Claim. Save as specified in this clause 6.4, the Insurance must comply with clause 5.6.

#### 6.5 **Fraud or dishonesty**

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance to the extent that any civil liability or related Defence Costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.

#### 6.6 **Trading debts**

The Insurance may exclude liability of the Insurer to indemnify any Insured against any trading loss or personal debt incurred by the Insured.

#### 6.7 **Partnership Agreement**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any actual or alleged breach or other relief in respect of disputes relating to the membership of and rights and obligations relating to membership of, the Firm, or disputes relating to or arising out of the partnership agreement between any two (2) or more persons comprising or formerly comprising the Firm.

## 6.8 **Solicitors Acts**

Save as specifically provided in this clause, the Insurance may generally exclude liability of the Insurer to indemnify the Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach) by the Insured of any provisions of the Solicitors Acts 1954 to 2011 or any regulations made thereunder or in respect of Misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (c) of the definition of "Claim"). However, the Insurance must specifically indemnify each Insured for any awards made under the provisions of the Solicitors Acts 1954 to 2011 for compensation or restitution to clients or any other obligations that may be imposed on solicitors or registered lawyers by statute from time to time to compensate or make restitution to clients.

## 6.9 **Insured acting as their own lawyer**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any liability arising in respect of a transaction where the Insured has acted as his or her own lawyer save and except where another solicitor or registered lawyer in the Firm concerned has bona fide acted at arm's length for the Insured concerned in respect of any such transaction or where the Claim is by a bona fide third party in respect of such transaction.

## 6.10 **Claims/Exposure to risk outside Ireland**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any loss occurring or any liability arising in connection with:—

- (a) any part of the Firm's Practice carried on from offices of the Firm located outside the Republic of Ireland, or
- (b) any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the Republic of Ireland (for this purpose the law of the Republic of Ireland includes European Union law where the same forms part of the law of the Republic of Ireland).

## 6.11 **Employment**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any Claim or Circumstance arising out of:—

- (a) a wrongful dismissal, or
- (b) any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress related claim brought by an Employee against a Firm where such claim arises out of the employment relationship between that Employee and the Firm), where such dismissal or breach is alleged or such relief is sought against the Insured.

## 6.12 **Contracts**

The Insurance may exclude liability of the Insurer to indemnify the Insured against:—

- (a) wrongful termination by the Insured of, or
- (b) any other actual or alleged breach by the Insured of, or



- (c) any other relief claimed against the Insured in respect of any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

#### 6.13 **Directors' liability**

The Insurance may exclude liability of the Insurer to indemnify any natural person in their capacity as a director or officer of a company, other than an administration, nominee, service or trustee company in respect of which coverage is required to be extended pursuant to these Minimum Terms and Conditions, except that:—

- (a) the Insurance must cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services, and
- (b) the Insurance must cover each other Insured against any vicarious or joint liability.

#### 6.14 **War, Terror, Asbestos, Radiation**

The Insurance may exclude liability of the Insurer to indemnify any Insured in respect of losses directly or indirectly caused by:—

- (a) war, riot, civil commotion and other hostilities,
- (b) terrorism,
- (c) 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, and
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the 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 Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

#### 6.15 **Undertakings to Financial Institutions in respect of Commercial Property Transactions**

Certain capitalised terms in this clause are defined in clause 6.16.

- (a) Undertakings to Financial Institutions in respect of Commercial Property Transactions before 1 December 2009

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, before 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where:—

- (i) the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that

Insured's client to permit that client to effect the relevant Commercial Property Transaction; and

- (ii) such Claims are made by a Financial Institution; and
- (iii) to the extent that the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

For the avoidance of doubt, nothing in this clause 6.15(a) shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client.

- (b) Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 1 December 2009 but before 1 December 2010

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, on or after 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction.

For the avoidance of doubt nothing in this clause 6.15(b) shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client.

- (c) Undertakings in breach of the Commercial Property Regulations on or after 1 December 2010

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of any Insured acting in breach of the Commercial Property Regulations.

#### 6.16 **Interpretation of Clause 6.15**

For the purposes of clause 6.15 the following terms have the following meanings:

**"Accountable Trust Receipt"** has the meaning ascribed thereto in the Commercial Property Regulations;

**"Certificate of Title"** has the meaning ascribed thereto in the Commercial Property Regulations;

**"Commercial Development"** has the meaning ascribed thereto in the Commercial Property Regulations;

**"Commercial Property Transaction"** has the meaning ascribed thereto in the Commercial Property Regulations;

**“Relevant Person”** has the meaning ascribed thereto in the Commercial Property Regulations;

**“Relevant Undertaking”** has the meaning ascribed thereto in the Commercial Property Regulations;

**“Representative”** has the meaning ascribed thereto in the Commercial Property Regulations;

**“Residential Property”** has the meaning ascribed to such term in the Commercial Property Regulations;

**“Residential Property Transaction”** has the meaning ascribed thereto in the Commercial Property Regulations;

**“Solicitor”** has the meaning assigned to it in Section 3 of the Solicitors (Amendment) Act, 1994 and includes two (2) or more Solicitors acting in partnership or association; and

**“Undertaking”** has the meaning ascribed to such term in the Commercial Property Regulations.

#### 6.17 **Misrepresentation and Non-Disclosure**

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of any Claim by a Financial Institution in circumstances where the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any Insured was guilty of any material misrepresentation or material non-disclosure in placing the Insurance, save that liability shall not be excluded on the grounds of innocent misrepresentation or innocent non-disclosure on the part of the Insured. For the avoidance of doubt, the effect of this clause 6.17 shall be that no such Claims shall be valid as against a Participating Insurer.

#### 6.18 **Financial Sanctions**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any Claim to the extent that payment of such Claim would cause the Insurer to breach any United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or any other jurisdiction applicable to the Insurer, such that the Insurer would be exposed to a sanction, prohibition or restriction.

### 7 **GENERAL CONDITIONS**

#### 7.1 **General Conditions**

The Insurance may contain such general conditions as are agreed between the Insurer and the Firm, but the Insurance must provide that the special conditions required by clause 5 prevail in the event of any inconsistency.

#### 7.2 **Reimbursement**

7.2.1 The Insurance may provide that each Insured who committed or condoned an innocent or negligent non-disclosure or misrepresentation or other innocent or negligent breach of the terms and conditions of the Insurance 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 or breach, 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 Law Society.

- 7.2.2 The Insurance may provide that each Insured who committed or condoned a dishonest or fraudulent non-disclosure or misrepresentation or other dishonest or fraudulent breach of the terms and conditions of the Insurance will be required to indemnify the Insurer in full in respect of any sums paid by it in or in connection with the discharge of any Claim pursuant to the Insurance.
- 7.2.3 The Insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a company unless it was committed or condoned by, in the case of a company, all directors and officers of that company.
- 7.2.4 The Insurance must provide that any right of reimbursement contemplated by this clause 7.2 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, 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 that the Insurer is not ultimately liable to pay.

### 7.4 **Reimbursement of the Self-Insured Excess**

The Insurance may provide for those persons who are Principals of the Firm at any time during the Coverage Period to reimburse the Insurer for any Self-Insured Excess paid by the Insurer on an Insured's behalf.

### 7.5 **Reimbursement of monies 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 that, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

### 7.6 **Claims Reports**

The Insurer shall provide a report (a "Claims Report") to any Firm to which it has issued a Policy either in the then current or in any previous Indemnity Period, within a reasonable time from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:—

- 7.6.1 a summary of each Claim of which the Insurer is aware made against the Firm under each Policy;
- 7.6.2 the amount reserved by the Insurer against each Claim;
- 7.6.3 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);
- 7.6.4 whether or not each such amount includes Defence Costs;

- 7.6.5 whether each such amount includes or is in excess of the amount of any excess or deductible that may apply in relation to such Claim, and the amount of any such excess or deductible; and
- 7.6.6 any amounts paid out in relation to each Claim, in each case indicating whether such sums include any excess or deductible due from but not paid by the Firm.
- 7.7 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 7.6, 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.

## **8 DISPUTE RESOLUTION**

### **8.1 Arbitration**

The Insurance must contain the following arbitration clause:

All disputes and differences arising under or in connection with this Policy shall be referred to the decision of a sole arbitrator to be agreed between the parties or, failing agreement between the parties within 14 (fourteen) days of either party having made a request in writing to the other party to concur in the appointment of an arbitrator, a person to be nominated by the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch) upon the application of either party.

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

### **8.2 Related Disputes**

The Insurance must provide that any dispute between the Insured and the Insurer as to coverage of any Claim or Circumstance under the Insurance shall be heard and determined in conjunction with any other related dispute between any insured party and that party's insurer.

### **8.3 Conduct of Claims**

- 8.3.1 The Insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer shall if so directed by the Law Society conduct any Claim against the Insured, advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured, such a direction by the Society to be known as a Direction.
- 8.3.2 The Society may make a Direction as referred to in clause 8.3.1 upon receipt of a request for such Direction from the Insured (to the exclusion of all other parties) if it is satisfied, in its absolute discretion, that:-
- (a) the Insured has taken all reasonable steps, to resolve the dispute with the other party, including but not limited to participating in Arbitration until a final decision had been made by the arbitrator as outlined in clause 8.1;
  - (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour;

(c) the Insured has demonstrated to the satisfaction of the Society that, in connection with the claim made to the Insurer, the Insured has provided all information reasonably requested by the Insurer and answered all reasonable questions asked by the Insurer in relation to the subject matter of the dispute; and

(d) it is fair and equitable in all the circumstances for such Direction to be given.

8.3.3 The Society may delegate its power to make a Direction in relation to a claim under clause 8.3.2 to an independent expert, to be appointed by the Society at its sole discretion and in accordance with any guidelines that may be adopted by the PII Committee from time to time in relation to the independence or expertise of any expert so appointed. For the avoidance of doubt, such independent expert must be satisfied that conditions (a) to (d) of clause 8.3.2 are met before making a Direction under that clause..

8.3.4 The Insurance may provide that the Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Insurance may further provide that the Insurer shall be entitled to recover from the Insured by way of damages a sum equal to the Insurer's loss arising from or connected with the Insured's failure to co-operate as required by the Insurance. For the avoidance of doubt, the Insurance may not permit the Insurer to refuse to pay any claim, or to cancel, terminate or avoid the Insurance, due to the Insured's failure to co-operate as required by the Insurer.

## SCHEDULE 2

### Special Purpose Fund

#### 1 GENERAL OPERATION

A Special Purpose Fund (the “**SPF**”) shall be established and shall comprise of, together, the ARP and the ROF.

The Insurer shall participate in the SPF in accordance with the terms of this Agreement save that it shall have no liability in respect of ARP Coverage or Run-off Cover incepting in an Indemnity Period following the Insurer ceasing to be a Participating Insurer.

In this Schedule, the following terms shall have the meanings given below:

“**Actual Premium Payable**” means the Premium Payable by a Firm provided that, where the Premium Payable in respect of a Firm exceeds the Premium Cap (as applicable), the Premium Payable in respect of that Firm for the purpose of the calculations in paragraph 3.9 of this Schedule 2, shall equal the amount of the applicable Premium Cap;

“**Actual Proportionate Participation**” has the meaning given in paragraph 3.5 of this Schedule 2;

“**Aggregate Excess**” means, in respect of any Policy that a Firm is required to maintain under the Regulations in accordance with the Minimum Terms and Conditions, the maximum aggregate sum of all potential excesses (howsoever expressed) whether or not insured by a Participating Insurer (or any other person) for which the Firm is liable under the Policy;

“**ARP Premium Schedule**” has the meaning ascribed to such term in the Regulations;

“**ARP Run-off Cover**” has the meaning ascribed to such term in the Regulations;

“**ARP Run-off Eligibility Criteria**” has the meaning ascribed to such term in the Regulations;

“**Calculated Premium Payable**” means the amount of premium calculated as payable by a Firm to a Participating Insurer by applying paragraphs 1 to 3 of the ARP Premium Schedule in their entirety but:

- (a) with the “Marginal rate on fees” discounted to:
  - (i) 30% of that stated for the fee band in respect of Gross Fees of 0 to €500,000; plus
  - (ii) 15% of that stated for the fee bands in respect of Gross Fees of €500,001 to €3,000,000; plus
  - (iii) 10% of that stated for the fee bands in respect of Gross Fees exceeding €3,000,001;
- (b) subject to a minimum amount of premium for each such Firm of €15,000; and
- (c) subject to the application of the Premium Cap to the amount of any premium so calculated which would otherwise exceed any applicable Premium Cap limit;

“**Declaration Premium Payable**” means, in respect of a Firm, the Actual Premium Payable unless:

- (a) any Un-Aggregated Excess:
  - (i) is an amount exceeding €15,000 and that amount exceeds 1% of Gross Fees; or
  - (ii) is an amount exceeding €500,000; or
- (b) any Aggregate Excess:
  - (i) is an amount exceeding €60,000 and that amount exceeds 5% of Gross Fees; or
  - (ii) is an amount exceeding €3,000,000,

in which case Declaration Premium Payable shall be the higher of Actual Premium Payable and Calculated Premium Payable;

“**Gross Fees**” has the meaning given in [paragraph 2] of the ARP Premium Schedule;

“**Initial Estimated Proportionate Participation**” has the meaning given in paragraph 3.3 of this Schedule 2;

“**Negative Adjustment Amount**” has the meaning given in paragraph 3.13.2 of this Schedule 2;

“**Percentage Participation**” has the meaning given in paragraph 3.8 of this Schedule 2;

“**Positive Adjustment Amount**” has the meaning given in paragraph 3.13.1 of this Schedule 2;

“**Premium Cap**” means (a) €550,000 or (b) where a Participating Insurer issues a Policy or underwrites a layer that provides a lower amount of cover than the “Minimum Level of Cover” (set out in paragraph 3.1 of the Minimum Terms and Conditions, being €1,500,000 at the date of this Agreement), the proportion of (a) that the underwritten layer bears to the “Minimum Level of Cover” calculated in accordance with the following formula:

$$\frac{L}{M} \times €550,000$$

Where:

*L* means the amount equal to the value of the layer (which shall be calculated by deducting the attachment point of the layer from the upper limit of the layer) underwritten by the Participating Insurer;

*M* means the Minimum Level of Cover (as set out in paragraph 3.1 of the Minimum Terms and Conditions, being €1,500,000 at the date of this Agreement);

“**Premium Payable**” means the amount of the premium (including any risk premium in respect of the SPF (or any aspect of it) and all levies and charges relating to a Policy) due from a Firm to a Participating Insurer (excluding any amount in respect of insurance premium tax), whether or not actually received by that Participating Insurer in respect of Policies (excluding ARP Coverage and Run-off Cover) incepting in the Indemnity Period commencing on 1 December 2015 to the extent that such premium relates to the placing of cover required in accordance with the Minimum Terms and Conditions and as calculated in accordance with generally recognised professional indemnity underwriting methodologies, less any amount due to any intermediary acting as agent of the Firm for the purpose of obtaining the professional indemnity insurance but only to the extent that such amount relates to the placing of cover required in accordance with the Minimum Terms and Conditions and no deduction shall be made of any amount payable to any intermediary in respect of any service which the intermediary provides to, for or on behalf of (whether as agent or otherwise) a Participating Insurer including, without limitation, insurer’s services brokerage, market services agreement commission, claim handling fee, fee for the



production of documentation, pursuant to any other work transfer arrangement or otherwise arising;

**“Relevant Premium Income”** means, in respect of a Participating Insurer, the aggregate Declaration Premium Payable to it in respect of Policies (excluding ARP Coverage and Run-off Cover) incepting in the Indemnity Period commencing on 1 December 2015, to the extent that such premium relates to the placing of cover required in accordance with the Minimum Terms and Conditions;

**“ROF Eligibility Criteria”** has the meaning ascribed to such term in the Regulations;

**“SPF Management Agreement”** means the agreement entered into by and between the Law Society and the SPF Manager, governing the management of the SPF, as the same may be modified, amended or replaced from time to time;

**“Un-Aggregated Excess”** means, in respect of any Policy that a Firm is required to maintain under the Regulations in accordance with the Minimum Terms and Conditions, the amount of any excess (howsoever expressed) whether or not insured by a Participating Insurer (or any other person) and in respect of which no aggregate limit is specified under the Policy (including, without limitation, by restricting the number of occasions or maximum value to which the excess and/or deductible (as the case may be) can be applied).

For the purposes of the definitions of Un-Aggregated Excess and Aggregate Excess, where a Policy that a Firm is required to maintain under the Regulations in accordance with the Minimum Terms and Conditions is provided by more than one (1) Participating Insurer on a co-insurance basis, the amount of the excess or deductible shall be the total excess applicable to the co-insurance arrangement and not the Insurer’s proportion of it.

## 2 **MANAGEMENT OF THE SPF**

2.1 The SPF, the ARP and the ROF shall be managed and administered by the SPF Manager.

2.2 The PII Committee shall, following consultation in that regard with the Participating Insurers Committee as provided for in this Agreement, appoint the SPF Manager to manage the SPF, the ARP and the ROF in accordance with a standard form of appointment to be designated by the PII Committee from time to time.

2.3 The SPF Manager may, with the prior written consent of the PII Committee, appoint one (1) or more third parties to carry out on its behalf some or all of the functions of the SPF Manager as set out in this Agreement and (without limitation to the generality of the foregoing) may delegate its functions of claims management and settlement, either generally or with reference to specific claims, to one (1) or more Participating Insurers, on such terms as the PII Committee may approve, including inter alia terms designed to avoid any conflicts of interest arising and to maintain confidentiality in respect of any designated classes of information.

2.4 The Insurer agrees that the SPF Manager may issue an ARP Coverage for and on account of the ARP incepting during any relevant Indemnity Period where either:

2.4.1 the Firm has applied to be insured through the ARP and:

- (a) satisfies the ARP Eligibility Criteria, or
- (b) holds an ARP Eligibility Dispensation; or

2.4.2 the Firm has not applied to be insured through the ARP and is a Defaulting Firm.

2.5 The Insurer agrees that the SPF Manager may issue Run-off Cover for and on account of the ROF incepting during any relevant Indemnity Period where the Firm satisfies the ROF Eligibility Criteria or the ARP Run-off Eligibility Criteria. The Insurer also agrees that a Defaulting Run-off Firm shall not be entitled to obtain Run-off Cover from the ROF but shall be

entitled to cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations.

2.6 The Insurer irrevocably appoints the SPF Manager as its agent to:

2.6.1 manage the SPF, the ARP and the ROF;

2.6.2 calculate and adjust the Insurer's Percentage Participation and percentage liability in respect of the SPF, the ARP and the ROF (or any of them);

2.6.3 if agreed in writing and subject to the terms of any agreement made with the Revenue Commissioners for this purpose, collect and account to the Revenue Commissioners for any stamp duty on insurance premiums in respect of the SPF, the ARP and the ROF (or any of them);

2.6.4 provide data to the Law Society relating to:

(a) the SPF;

(b) the ARP Coverage and/or Firms in the ARP and/or each other coverage arranged by the SPF Manager pursuant to paragraph 2.12; and

(c) the Run-off Cover, Firms in the ROF, Run-off Firms in respect of which the SPF Manager has arranged cover through the ROF under paragraph 2.13 and/or Defaulting Run-off Firms in respect of which the SPF Manager has arranged cover through the ROF under paragraph 2.14 or Regulation 6(a) of the Regulations,

or any of them;

2.6.5 do all things necessary and incidental to any of the above, the matters set out in paragraphs 2.7 and 2.8 below and any other such things as may be necessary from time to time to facilitate the operation of the SPF, the ARP and the ROF; and

2.6.6 carry out and perform such other functions and duties as the PII Committee may from time to time determine to be appropriate and necessary.

2.7 The Insurer irrevocably appoints the SPF Manager as its agent to:

2.7.1 calculate the premium payable by each Firm in the ARP in accordance with the ARP Premium Schedule and the Regulations;

2.7.2 bind the Insurer to the terms of ARP Coverage issued to each Firm in the ARP;

2.7.3 issue ARP Coverage and related documentation to Firms in the ARP on behalf of Participating Insurers participating in the ARP; and

2.7.4 receive notice of, negotiate, settle and pay claims on behalf of all Participating Insurers participating in the ARP.

2.8 The Insurer irrevocably appoints the SPF Manager as its agent to:

2.8.1 bind the Insurer to the terms of Run-off Cover issued to each Firm in the ROF;

2.8.2 issue Run-off Cover and related documentation to Firms in the ROF on behalf of Participating Insurers participating in the ROF; and

2.8.3 receive notice of, negotiate, settle and pay claims on behalf of all Participating Insurers participating in the ROF.

- 2.9 The Insurer agrees with the Law Society that it shall appoint and the Insurer hereby irrevocably appoints the SPF Manager as its agent to:
- 2.9.1 conduct any claim against a Firm in the ARP, advance defence costs and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant Participating Insurer, and
- 2.9.2 where appropriate to commence, be a party to and be bound by the decision of any arbitration in accordance with clauses 14 and 15 of this Agreement where the matters in issue in such arbitration relate to the Insurer's participation in the ARP and the Insurer undertakes that it shall, at the request or direction of the PII Committee from time to time, provide the SPF Manager with such evidence of its appointment hereunder in such form as may, in the opinion of the PII Committee, be necessary and/or desirable.
- 2.10 The Insurer agrees with the Law Society that it shall appoint and the Insurer hereby irrevocably appoints the SPF Manager as its agent to:
- 2.10.1 conduct any claim against a Firm in the ROF, advance defence costs and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant Participating Insurer, and
- 2.10.2 where appropriate to commence, be a party to and be bound by the decision of any arbitration in accordance with clauses 14 and 15 of this Agreement where the matters in issue in such arbitration relate to the Insurer's participation in the ROF and the Insurer undertakes that it shall, at the request or direction of the PII Committee from time to time, provide the SPF Manager with such evidence of its appointment hereunder in such form as may, in the opinion of the PII Committee, be necessary and/or desirable.
- 2.11 Where a Firm seeking coverage through the ARP makes an application to the SPF Manager to enter into the ARP, the SPF Manager shall establish whether that Firm is eligible to be covered through the ARP in accordance with paragraph 2.4.1, and if so, the SPF Manager may issue an ARP Coverage to that Firm. The SPF Manager shall notify the Law Society within one (1) Working Day after issuing the ARP Coverage of the identity of the Firm in question and the fact that the Firm in question has been issued with an ARP Coverage.
- 2.12 The Insurer agrees with the Law Society that it shall appoint and the Insurer hereby irrevocably appoints the SPF Manager as its agent to make and agree arrangements with the Law Society for the purpose of providing professional indemnity insurance in respect of Defaulting Firms in the ARP, and the effect of such arrangements shall be that insurance shall be provided in respect of Defaulting Firms by those Participating Insurers participating in the SPF incorporating the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.
- 2.13 The Insurer agrees with the Law Society that it shall appoint and the Insurer hereby irrevocably appoints the SPF Manager as its agent to make and agree arrangements with the Law Society for the purpose of providing Run-off Cover in respect of Run-off Firms in the ROF as and to the extent prescribed by the Regulations, and the effect of such arrangements shall be that insurance shall be provided in respect of Run-off Firms by those Participating Insurers participating in the SPF incorporating the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.
- 2.14 The Insurer agrees with the Law Society that it shall appoint and the Insurer hereby irrevocably appoints the SPF Manager as its agent to make and agree arrangements with the Law Society for the purpose of providing professional indemnity insurance in respect of Defaulting Run-off Firms in the ROF, and the effect of such arrangements shall be that insurance shall be provided in respect of Defaulting Run-off Firms by those Participating Insurers participating in the SPF incorporating the Minimum Terms and Conditions as varied by or pursuant to the Regulations.

- 2.15 Any ARP Coverage issued in accordance with paragraph 2.11 shall incept on the date specified by the SPF Manager in accordance with the provisions of the Regulations. Any other coverage arranged by the SPF Manager pursuant to paragraph 2.12 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 ceased to hold Qualifying Insurance outside the ARP but for the avoidance of doubt, that fact shall not operate to permit any Firm receiving the benefit of such coverage to maintain that it has satisfied the provisions of the Regulations such as not to be in default thereunder.
- 2.16 Any Run-off Cover issued to a Firm in accordance with the Regulations shall incept on the date of expiry of that Firm's Coverage Period or its ARP Coverage (as the case may be). Any other cover arranged by the SPF Manager pursuant to paragraph 2.13 or 2.14 shall be treated as incepting on the date on which the Firm becomes a Run-off Firm or a Defaulting Run-off Firm (as the case may be).

### 3 BASIS OF PARTICIPATION IN THE SPECIAL PURPOSE FUND

- 3.1 The Insurer shall participate in the SPF (including, without limitation, the ARP and the ROF) and shall share the premium therefore and shall contribute, in conjunction with all other Participating Insurers, to the provision of:
- 3.1.1 ARP Coverage;
  - 3.1.2 Run-off Cover;
  - 3.1.3 each other coverage arranged by the SPF Manager pursuant to paragraph 2.12; and
  - 3.1.4 any other cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 hereof,
- pursuant to this Agreement.
- 3.2 The Insurer shall provide to the SPF Manager on or before 31 January in each Indemnity Period a statement of its Initial RPI Estimate for that Indemnity Period (the "**Initial RPI Estimate Statement**").
- 3.3 The SPF Manager, having received the Initial RPI Estimate Statement from Participating Insurers, shall calculate the Insurer's initial proportionate participation in the SPF for that Indemnity Period on the basis of such Initial RPI Estimates (the "**Initial Estimated Proportionate Participation**") in accordance with paragraph 3.9 and shall notify the same to the Insurer no later than ten (10) Working Days after 31 January of each Indemnity Period.
- 3.4 The Insurer shall provide to the SPF Manager within 15 (fifteen) Working Days of the end of each Indemnity Period in respect of which it was a Participating Insurer for the whole or any part thereof, a Final RPI Statement for the preceding Indemnity Period or any part thereof.
- 3.5 The SPF Manager, having received the Final RPI Statements referred to in paragraph 3.4 from Participating Insurers, shall recalculate the Insurer's proportionate participation for that preceding Indemnity Period on the basis of such final statements (the "**Actual Proportionate Participation**") in accordance with paragraph 3.9 and shall notify the same to the Insurer no later than ten (10) Working Days after the date on which the statements referred to in paragraph 3.4 are due to be provided.
- 3.6 Where a Participating Insurer (including the Insurer) fails to provide the Initial RPI Estimate Statement within the required time limit or at all, the SPF Manager may estimate, in its absolute discretion, that Participating Insurer's Relevant Premium Income for the relevant Indemnity Period and may calculate the Insurer's Initial Estimated Proportionate Participation on the basis of such estimate and notify the same to the Insurer in accordance with paragraph 3.3.

3.7 Where a Participating Insurer (including the Insurer) fails to provide the Final RPI Statement referred to in paragraph 3.4 within the required time limit or at all, the SPF Manager may estimate, in its absolute discretion, that Participating Insurer's Relevant Premium Income for the relevant Indemnity Period and declare that the Participating Insurer's Actual Proportionate Participation for that Indemnity Period shall be such proportion as the SPF Manager may in its absolute discretion determine.

3.8 The Insurer's percentage participation in the SPF, the ARP, the ROF, each other coverage arranged by the SPF Manager pursuant to paragraph 2.12 and any cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 (or any of them) in respect of an Indemnity Period shall be taken as:

3.8.1 its Initial Estimated Proportionate Participation as declared pursuant to paragraph 3.3 until superseded by the declaration of its Actual Proportionate Participation pursuant to paragraph 3.5; and

3.8.2 thereafter, the Actual Proportionate Participation as determined in accordance with paragraph 3.5,

save that in the circumstances set out in paragraphs 3.6 or 3.7, the Insurer's percentage participation shall be the Initial Estimated Proportionate Participation or Actual Proportionate Participation (as applicable) as adjusted by the SPF Manager pursuant to those paragraphs (subject to any adjustment by the SPF Manager in accordance with paragraph 3.12) (the Insurer's "**Percentage Participation**").

3.9 Each calculation made under this paragraph 3.9 shall be made in accordance with the formula:

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

**A** = the Initial RPI Estimate or the Final RPI Statement (as applicable) as declared by the Insurer in accordance with paragraph 3.2 or 3.4 (as applicable) or as estimated or adjusted by the SPF Manager in accordance with paragraphs 3.6, 3.7 and 3.12 (as the case may require);

**B** = the total Relevant Premium Income declared by all Participating Insurers on their Initial RPI Estimates or Final RPI Statements (as applicable) for the relevant Indemnity Period.

3.10 Where as a result of any calculation carried out by the SPF Manager pursuant to paragraph 3.9 the Insurer's Initial Estimated Proportionate Participation or Actual Proportionate Participation is less than one percent (1%) of the total Relevant Premium Income of all Participating Insurers during that Indemnity Period, it shall be deemed for all purposes of this Agreement to be one percent (1%).

3.11 The Insurer warrants and represents to the SPF Manager (as agent and trustee for each Participating Insurer participating in the SPF, the ARP, the ROF, each other coverage arranged by the SPF Manager pursuant to paragraph 2.12 and any cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 (or any of them) for the relevant Indemnity Period) that:

3.11.1 its estimated Relevant Premium Income stated in its Initial RPI Estimate (under paragraph 3.2) is its best estimate and it has taken reasonable care in preparing such estimate;

3.11.2 it has taken reasonable steps to verify the accuracy of its declared Relevant Premium Income stated in its Final RPI Statement under paragraph 3.4 and to the best of its

knowledge and belief such statement does not understate its actual Relevant Premium Income for the relevant Indemnity Period;

- 3.11.3 and the warranties and representations set out in this paragraph shall be deemed to be repeated on each day during which this Agreement remains in effect between the Insurer and the Law Society.
- 3.12 If and to the extent that the Insurer discovers any inaccuracy or understatement in any statement of Relevant Premium Income provided by the Insurer hereunder (including the Initial RPI Estimate or the Final RPI Statement (as applicable)), the Insurer shall inform the SPF Manager thereof. The SPF Manager shall be entitled to make such adjustments to the Percentage Participation of each Participating Insurer as may be appropriate in its discretion to remedy any inaccuracy or understatement in any statement of Relevant Premium Income provided by any Participating Insurer hereunder (whether on an estimated or actual basis) and whether such inaccuracy or understatement is contained in a notification provided by a Participating Insurer or is discovered by the SPF Manager.
- 3.13 Following the recalculation of an Insurer's Percentage Participation pursuant to paragraphs 3.5, 3.7 and 3.12, the SPF Manager shall calculate and determine the amount of any consequential adjustment to be made to any premium amount paid to, or claim and/or costs amount paid by, each Participating Insurer in respect of the ARP and the applicable Indemnity Period. Where, following a recalculation:
- 3.13.1 a Participating Insurer has paid more than its Percentage Participation of claims and costs or received less than its Percentage Participation of any premium in respect of an Indemnity Period (the amount of the overpayment of claims and costs or underpayment of premium being the **Positive Adjustment Amount**), the SPF Manager shall pay the Positive Adjustment Amount to the Participating Insurer, unless the SPF Manager elects (in its absolute discretion) by notice to the Participating Insurer to set off the Positive Adjustment Amount against any amount that is owed by the Participating Insurer in respect of the SPF (or any part of it); or
- 3.13.2 a Participating Insurer has paid less than its Percentage Participation of claims and costs or received more than its Percentage Participation of any premium in respect of an Indemnity Period (the amount of the underpayment of claims and costs or overpayment of premium received being the **Negative Adjustment Amount**), the Participating Insurer shall pay the Negative Adjustment Amount to the SPF Manager, unless the SPF Manager (in its absolute discretion) elects by notice to the Participating Insurer to set off the Negative Adjustment Amount against any amount that is owed in respect of the SPF (or any part of it) to the Participating Insurer,
- and the payment or election (as the case may be) shall be made no later than 20 (twenty) Working Days after the recalculation of the Participating Insurer's Percentage Participation is determined in accordance with this paragraph.

- 3.14 If the Insurer fails to make a payment demanded by the SPF Manager in accordance with paragraph 3.13, the Insurer shall be liable to pay interest on any such amount to the SPF Manager at two percent. (2%) over the then-prevailing base lending rate of the European Central Bank.

#### 4 **REPORTING**

- 4.1 The SPF Manager shall on or about the end of each calendar quarter (but in any event within twenty eight (28) Working Days of the end of each such quarter) provide a bordereau to each Participating Insurer participating in the SPF, the ARP, the ROF and other coverage arranged by the SPF Manager pursuant to paragraph 2.12 and any cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 (or any of them) in respect of an Indemnity Period setting out premiums received and claims made or notified in respect of that Indemnity Period, and the

establishment, administration and management costs and expenses incurred by the SPF Manager relating to that Indemnity Period.

- 4.2 The obligations of the SPF Manager under paragraph 4.1 shall continue for so long as any claim made on ARP Coverage, Run-off Cover, each other coverage arranged by the SPF Manager pursuant to paragraph 2.12 or cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 incepting in that Indemnity Period remains outstanding.

## **5 SHARE OF PREMIUMS**

- 5.1 The Insurer shall be entitled to share in all premiums received by the SPF Manager in respect of ARP Coverage and other coverage arranged by the SPF Manager pursuant to paragraph 2.12, in each case, incepting in the relevant Indemnity Period, and to share in investment income earned on all such premiums, in accordance with its Percentage Participation from time to time, subject to such deductions therefrom as the SPF Manager considers reasonable and necessary in its discretion for the proper and efficient operation of the SPF (or any part of it) in respect of that Indemnity Period.
- 5.2 The SPF Manager shall account to each Participating Insurer for its proportionate share of the sums remaining following any deductions in accordance with paragraph 5.1 on or about the end of each calendar quarter.
- 5.3 The SPF Manager shall maintain all premiums received in respect of ARP Coverage in a separate trust account, held by the SPF Manager on trust for all Participating Insurers that participate in the ARP during the respective Indemnity Period in their respective shares and for their respective interests.

## **6 SHARE OF LIABILITY**

- 6.1 The Insurer shall be liable to make payments under each ARP Coverage, Run-off Cover, each other coverage arranged by the SPF Manager pursuant to paragraph 2.12 and any cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 (or any of them) incepting in the relevant Indemnity Period in accordance with its Percentage Participation in respect of such Indemnity Period.
- 6.2 The Insurer shall be required to pay over to the SPF Manager on demand any sums requested by the SPF Manager for the purposes of settling any liability of the Insurer in accordance with paragraph 6.1.
- 6.3 The Insurer shall in addition be required to pay over to the SPF Manager on demand any sums requested by the SPF Manager representing:
- 6.3.1 the costs of establishment, administration, management, replacement and/or closure of the SPF, the ARP and the ROF and the SPF Management Committee (or any of them) (in accordance with the provisions of the SPF Management Agreement and, where not expressly provided for in the SPF Management Agreement, as determined by the SPF Manager in its absolute discretion);
  - 6.3.2 the costs of handling any claim against an ARP Coverage and the costs of handling any claim against each other coverage arranged by the SPF Manager pursuant to paragraph 2.12;
  - 6.3.3 the costs of handling any claim against a Run-off Cover and the costs of handling any claim against each other cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14;

- 6.3.4 the costs of handling, compromising or settling any claim required to be handled by the SPF Manager pursuant to clause 9.1.2 (including any costs awarded against a Firm that fall properly to be so paid by the ARP);
- 6.3.5 the costs of audit reports prepared in respect of those Firms which have provided written notice to the SPF Manager, pursuant to Regulation 8 of the Regulations, of their intention to cease practice and to enter the ROF in the next Indemnity Period ("**Run-Off Audit Costs**").
- 6.4 Subject to paragraphs 3.6, 3.7 and 3.12, where a demand is made under paragraphs 6.2 or 6.3 prior to the calculation by the SPF Manager of the Insurer's Actual Proportionate Participation for that Indemnity Period, the SPF Manager may make such demand on the basis of the Insurer's Initial Estimated Proportionate Participation for that Indemnity Period and the Insurer shall be entitled to receive the benefit of, or shall make any balancing payment in respect of, any difference between its liability as determined in accordance with its Initial Estimated Proportionate Participation and its Actual Proportionate Participation in accordance with paragraph 3.13.
- 6.5 It is acknowledged by the parties hereto that although the Insurers in each Indemnity Period are required, pursuant to paragraph 6.3.5, to pay the Run-Off Audit Costs incurred in an Indemnity Period, the Run-off Audit Costs are costs which are attributable to the ROF which provides Run-Off Cover to those Firms in respect of which the audit reports have been prepared. Accordingly, the SPF Manager shall, in each Indemnity Period and in accordance with this clause 6.5, carry out a recalculation of the Run-Off Audit Costs paid by the Insurers in the previous Indemnity Period to ensure that those costs are properly attributed to the Insurers of the relevant ROF.

Following the calculation of an Insurer's Actual Proportionate Participation in respect of an Indemnity Period, the SPF Manager shall calculate and determine the amount of any consequential adjustment to be made to the amount of any Run-Off Audit Costs paid by each Insurer in the previous Indemnity Period. Where, following a recalculation:

- 6.5.1 an Insurer has paid more than its Percentage Participation of Run-Off Audit Costs (the amount of the overpayment of Run-Off Audit Costs being the **Positive Run-Off Adjustment Amount**), the SPF Manager shall pay the Positive Run-Off Adjustment Amount to the Insurer, unless the SPF Manager elects (in its absolute discretion) by notice to the Insurer to set off the Positive Run-Off Adjustment Amount against any amount that is owed by the Insurer in respect of the SPF (or any part of it); or
- 6.5.2 an Insurer has paid less than its Percentage Participation of Run-Off Audit Costs (the amount of the underpayment of Run-Off Audit Costs being the **Negative Run-Off Adjustment Amount**), the Insurer shall pay the Negative Run-Off Adjustment Amount to the SPF Manager, unless the SPF Manager (in its absolute discretion) elects by notice to the Insurer to set off the Negative Run-Off Adjustment Amount against any amount that is owed in respect of the SPF (or any part of it) to the Insurer,

and the payment or election (as the case may be) shall be made no later than 20 Working Days after the recalculation of the Insurer's Percentage Participation is determined.

- 6.6 The Insurer shall pay over to the SPF Manager any sums demanded by the SPF Manager pursuant to paragraph 6 within ten (10) Working Days of such demand being made, and failing payment in accordance with this paragraph, the Insurer shall be liable to pay interest on any such amount to the SPF Manager at two percent (2%) over the then-prevailing base lending rate of the European Central Bank.

## 7 SPECIAL PURPOSE FUND INDEMNITY PERIOD

- 7.1 Each ARP Coverage issued by the SPF Manager on behalf of the Participating Insurers shall expire:



- 7.1.1 at the end of an Indemnity Period, irrespective of the date on which the ARP Coverage is written or incepted; or
- 7.1.2 on the date when the relevant Firm is no longer entitled to be covered under an ARP Coverage pursuant to the Regulations,

whichever date is earlier.

- 7.2 Each coverage issued by the SPF Manager pursuant to paragraph 2.12, each Run-off Cover issued by the SPF Manager and each other cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14, in each case, on behalf of the Participating Insurers shall expire on the date specified therein by the SPF Manager, unless such coverage, Run-off Cover or cover (as the case may be) is subject to earlier termination by agreement between the SPF Manager and the relevant Firm.

## 8 **COSTS OF AUDIT**

The SPF Manager shall pay on behalf of Participating Insurers the costs and expenses of the Law Society in respect of any Risk Management Audit and any related costs that are imposed on an ARP Firm, a Run-off Firm, any Firm which has other coverage arranged by the SPF Manager pursuant to paragraph 2.12 or cover arranged by the SPF Manager through the ROF under Regulation 6(a) of the Regulations and/or in accordance with paragraphs 2.13 or 2.14 or on any Firm in respect of which a Risk Management Audit has been conducted as notified to the SPF Manager by the Law Society. The SPF Manager shall be entitled to seek reimbursement of any such costs and expenses from the relevant Firm.

## 9 **OTHER PROVISIONS**

- 9.1 The Insurer undertakes and agrees with the SPF Manager and the Law Society that it shall:
  - 9.1.1 to the extent requested, ratify and confirm any lawful act or omission of the SPF Manager on behalf of the Insurer in the performance by the SPF Manager of its duties hereunder; and
  - 9.1.2 indemnify the SPF Manager in respect of all liabilities, claims, expenses, losses, costs (including legal costs) and demands incurred by it (whether on its own account or on account of the Participating Insurers) in the performance by it of its duties hereunder.
- 9.2 The indemnity given in clause 9.1.2 shall not extend to absolve the SPF Manager of liability for negligence or breach of duty in relation to the operation and management of the SPF or any part of it (including, without limitation, the ARP or the ROF).
- 9.3 The SPF Manager shall be entitled, at any time and from time to time on giving reasonable notice in writing to the Insurer, to inspect all records of Policies underwritten by the Insurer where the inspection of such records is necessary for the purposes of verifying any estimated or actual statements of Premium Income required to be provided by the Insurer hereunder.

**SCHEDULE 3**

**Form of Confirmation of Cover**

**THE LAW SOCIETY OF IRELAND**

**CONFIRMATION OF MINIMUM LEVEL OF COVER**

Name of Firm:

Address of Firm:

Coverage Period:

Policy Number:

Name of Underwriter(s) or Lloyd's syndicate(s) (in the case of Lloyd's syndicates the number(s) of the syndicate(s) providing the cover should be noted, together with the percentage of cover provided by each syndicate):

We confirm that for the coverage period specified above cover in accordance with the Minimum Terms and Conditions (as defined by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2015 is in place and that the cover provided is in compliance with the requirements of the Regulations in respect of the conduct of business by the above named Firm.

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

For and on behalf of: \_\_\_\_\_

\*Please note that the confirmation of cover should either be printed on your professional notepaper or contain your company stamp.

**THIS FORM SHOULD ONLY BE COMPLETED BY A PARTICIPATING INSURER OR THE BROKER WHO HAS ARRANGED THE COVER**

## SCHEDULE 4

### Insurer Information

|    | <b>Information Required</b>  |
|----|--|
| 1. | Any financial rating held by the insurer   |
| 2. | The insurer's country of registration  |
| 3. | The insurer's home state regulator   |
| 4. | The insurer's full legal name  |
| 5. | The insurer's registered office and principal place of business (if different)   |
| 6. | Contact details (to include name(s), telephone number(s), fax number(s) and email address(es)) of the representative(s) of the Insurer who are responsible for managing its PII business |

**DATED [•] 2015**

**(1) LAW SOCIETY OF IRELAND**

**AND**

**(2) [THE INSURER]**

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**PARTICIPATING INSURERS AGREEMENT  
(including the terms on which  
Participating Insurers shall participate  
in the Special Purpose Fund)**

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