

## Minimum Terms and Conditions

### MINIMUM TERMS AND CONDITIONS OF PROFESSIONAL INDEMNITY INSURANCE FOR SOLICITORS AND REGISTERED LAWYERS IN IRELAND EFFECTIVE: 1<sup>ST</sup> DECEMBER 2009

#### 1 INTERPRETATION

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

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

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

“**Amount Insured**” means the aggregate 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;

“**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 2002 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;

“**Commercial Development**” means the development (whether by construction or renovation) of a building, part of a building or land:-

- (a) for use for or in connection with any trade, industry, retail or other business undertaking or the production or supply of goods or services;
- (b) with a view to the earning of rental income; or
- (c) with a view to the construction thereon or therein of multiple residential units;

“**Commercial Property Transaction**” means any transaction other than a Residential Property Transaction and includes, but is not limited to, the following:-

- (a) the acquisition of a building, part of a building, or land, which is used, or set aside to be used, wholly or exclusively for, or in connection with:
  - (i) any trade, industry, retail or other business undertaking;
  - (ii) the production or supply of goods or services;

- (b) the acquisition of a building, or any part of a building, exclusively with a view to earning rental income or for capital appreciation or both;
- (c) the acquisition of a building, part of a building, or land, which is in all the circumstances reasonably likely at the time of such acquisition to be used for, or in connection with Commercial Development;

**“Coverage Period”** means the period for which the Insurance affords cover;

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

**“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 9.3;

**“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 4(1) of Directive 2006/48/EC;
- (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;

**“Firm”** means:-

- (a) the Partnership (as constituted as at the commencement of the Coverage Period) which, or sole practitioner who, contracted with the Insurer to provide the Insurance, and
- (b) the Partnership referred to in paragraph (a) as constituted from time to time, whether prior to or during the Coverage Period;

**“Firm’s Practice”** means the practice carried on by the Firm at the commencement of the Coverage Period and the continuous legal practice preceding and succeeding this practice;

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

**“Insured”** means:-

- (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
- (f) 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 and where the context so requires includes the SMDF;

**“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 commissioner for oaths,
- (e) acting as liquidator or receiver,

- (f) acting as company secretary,
- (g) acting as director of any company owned by the Principals of a Firm that provides trustee, nominee, administration or other services,
- (h) acting as arbitrator or mediator, and
- (i) acting on a pro bono basis;

**“Minimum Terms and Conditions”** mean these minimum terms and conditions, as amended from time to time;

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

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

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

**“Preceding Practice”** means each practice to which the Firm’s Practice is a Succeeding Practice;

**“Principal”** means:-

- (a) in relation to a Partnership, any person that is a partner of that Partnership and any person held out as a partner,
- (b) in relation to a sole practice, any person that is a sole practitioner of that practice, including, for the avoidance of doubt a sole practitioner who employs one or more solicitors, registered lawyers or other lawyers;

**“Regulations”** mean the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007, as amended;

**“Relevant Undertaking”** means an Undertaking which relates to:-

- (a) an obligation undertaken by the Insured to discharge or procure the discharge of a mortgage or other security on, or a loan advanced on the security of, any land or buildings the subject of the relevant Commercial Property Transaction; or
- (b) an obligation undertaken by the Insured to furnish or procure the furnishing of the relevant Financial Institution or any director, officer, employee, agent or advisor of such Financial Institution, with a certificate relating to title to any land or buildings the subject of the relevant Commercial Property Transaction; or
- (c) an obligation undertaken by the Insured to furnish or procure the furnishing of the relevant Financial Institution or any director, officer, employee, agent or advisor of such Financial Institution, with title deeds to any land or buildings the subject of the relevant Commercial Property Transaction; or
- (d) an obligation undertaken by the Insured to pay or procure the payment of any stamp duty accruing due in connection with, or to register or procure the registration of title to any land or buildings the subject of, the relevant Commercial Property Transaction;

**“Residential Property Transaction”** means:-

- (a) the acquisition by an individual of any building, or part of a building, that is intended at the time of such acquisition to be used as a private dwelling place, including for the avoidance of doubt, a building or part of a building occupied or intended to be occupied on an occasional basis, whether as a holiday home or otherwise, save that the acquisition of a building or part of a building exclusively with a view to earning rental income shall not constitute a Residential Property Transaction; or
- (b) the acquisition of land by an individual that is intended at the time of such acquisition to be used to construct a building to be used as a private dwelling place, including for the avoidance of doubt, a building or part of a building to be occupied on an occasional basis, whether as a holiday home or otherwise, save that acquisition of land to construct a building exclusively with a view to earning rental income from that building or part of the building shall not constitute a Residential Property Transaction;

**“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;

**“SMDF”** means the Solicitors Mutual Defence Fund Limited;

**“Succeeding Practice”** means a practice that satisfies any one 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 that has a majority of Principals that are identical to those persons that 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 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
- (e) it is carried on under the same name as the Preceding Practice or a name which substantially incorporates the name of the Preceding Practice, or
- (f) it is carried on from the same premises as the Preceding Practice, or
- (g) the Partnership which, or sole practitioner who, conducts the practice has acquired the goodwill and/or assets of the Preceding Practice, or
- (h) 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), (f), (g) or (h) if another practice is or was held out by the owner of that other practice as the Succeeding Practice; and

**“Undertaking”** means any unequivocal declaration of intention addressed to a person who reasonably places reliance on it, which is made by a solicitor in the course of his or her practice, either personally or by a member of the solicitor’s staff, whereby the solicitor, or in the case of a member of his or her staff, his or her employer, becomes personally bound.

- 1.2 In the 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 2002 (Professional Indemnity Insurance) Regulations 2007;
  - (b) the singular includes the plural, and vice versa;
  - (c) the male gender includes the female and neuter genders;
  - (d) references to a “person” include any individual or company;
  - (e) references to a “company” include any body corporate; and
  - (f) headings are inserted for convenience only and are not an aid to interpretation.
- 1.3 In the Minimum Terms and Conditions, where they apply to coverage issued by the SMDF:-
- (a) the definition of the term “**Insured**” as set out herein shall apply to identify the persons and entities required to be the subject of coverage issued by the SMDF pursuant to the Regulations;
  - (b) the terms “**Insurance**”, “**Insurer**”, “**insure**” and other cognate terms shall be construed, where those terms apply to the SMDF and to coverage issued by it on the terms of the Minimum Terms and Conditions, to include and to refer to such coverage.
- 1.4 Nothing in the Minimum Terms and Conditions shall be construed to negative any discretion that the SMDF or the Solicitors Mutual Defence Fund Limited on its behalf may have, whether under statute, its organisational documents or otherwise howsoever to determine in its discretion whether to indemnify a Firm or a member or any other person.

## 2 **SCOPE OF COVER**

### 2.1 **The Insured**

The Insured must include, and coverage under the Insurance 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 first made against the Insured and notified to the Insurer during the Coverage Period; or
- (b) such civil liability arises from Circumstances first notified to the Insurer during the Coverage Period.

### 2.3 **Defence Costs**

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

- (a) any Claim referred to in clauses 2.2, 2.4 and 2.5; or
- (b) any Circumstance first notified to the Insurer during the Coverage Period;

and the Insurance shall provide that such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

## 2.4 Preceding Practice

2.4.1 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 first made against an Insured during the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and arises from Circumstances first notified to the Insurer during the Coverage Period.

2.4.2 For the purposes of such cover as is contemplated in clause 2.4.1, 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 2.4.2 who is deceased or legally incapacitated.

2.4.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Preceding Practice provided pursuant to this clause 2.4, 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.

## 2.5 Succeeding Practice

2.5.1 Where there is a succession 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 first made against an Insured during the Coverage Period; or
- (b) a Claim in respect of such liability is made during or after the Coverage Period and arises from Circumstances first notified to the Insurer during the Coverage Period.

2.5.2 For the purposes of such cover as is contemplated in this clause 2.5 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 2.5.2 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 Succeeding 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.

### **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 Insurer, each of which must be a Qualified 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 Qualified Insurers.

3.6.2 Where the Insurance is underwritten jointly by more than one Insurer, the Insurance must state which Qualified 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 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 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**

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 Assigned Risks Pool).

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 7.17, 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**

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.

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 2002 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 7.4, 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 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**

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 at all,

- (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 7 applies.

#### **5.9 Coverage Period**

The Coverage Period must run from the date of inception of the relevant Insurance and must expire on the following 30 November.

#### **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) shall advise that such proceedings or arbitration should be contested.

### **6 RUN-OFF COVER**

#### **6.1 Cessation of Firm's Practice**

Where each of the following conditions is met:-

- (a) the Firm's Practice ceases during or on expiry of a Coverage Period, and
- (b) there is no Succeeding Practice in relation to the Firm's Practice that holds Qualifying Insurance in respect of the Firm's Practice

then the Insurance must provide run-off cover for the first two calendar years from the date upon which the Firm's last Coverage Period expires, such cover to be provided on the basis of the Minimum Terms and Conditions as they stand as at the inception date of the relevant Policy. Where the Insurance was provided on a co-insurance basis and the conditions in (a) and (b) above are satisfied, each relevant Insurer shall provide its proportionate share of such run-off coverage on the basis of the Minimum Terms and Conditions as they stand at the inception date of the relevant Policy.

#### **6.2 Extent of Coverage**

The run-off cover referred to in clause 6.1 must indemnify the Insured in accordance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

#### **6.3 Succeeding Practice**

The Insurance must provide that where there is a Succeeding Practice in relation to the Firm's Practice, run-off cover will not be activated, provided that the Succeeding Practice has Insurance in place in compliance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

#### **6.4 No Cancellation**

The Insurance must provide that the run-off cover is not subject to cancellation on any basis whatsoever, save that:-

- (a) it may be cancelled on terms to be agreed between the Insurer and the Firm where the following conditions are met:-

- (i) the Firm has obtained Insurance in accordance with these Minimum Terms and Conditions as and to the extent prescribed by the Regulations on the date of cancellation of the relevant run-off cover; and
  - (ii) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (i) have confirmed in writing to the Firm and to the Qualified Insurer or Qualified Insurers under the relevant run-off cover that they are providing Insurance on the basis that the Firm's Practice is to be treated as a continuation of the Firm's Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and
  - (iii) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (i) have provided any required confirmations of coverage to the Law Society pursuant to the Regulations;
- (b) in respect of a Firm which ceases Practice after the commencement of the Indemnity Period beginning on 1 December 2009 or during any subsequent Indemnity Period, it may be cancelled by a Qualified Insurer or Qualified Insurers in circumstances where any additional premium required to be paid by the Firm pursuant to the terms of the Insurance in respect of the relevant run-off cover has not been paid by the Firm to the Qualified Insurer or Qualified Insurers when stated to be due pursuant to the terms of such Insurance.

## **7 EXCLUSIONS**

### **7.1 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 or a number of the matters set out in this clause 7.

### **7.2 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).

### **7.3 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.

### **7.4 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 7.4, the Insurance must comply with clause 5.5.

### **7.5 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.

#### **7.6 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.

#### **7.7 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 or more persons comprising or formerly comprising the Firm.

#### **7.8 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 2002 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 2002 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.

#### **7.9 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.

#### **7.10 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 (which includes European Union law where the same forms part of the law of the Republic of Ireland).

#### **7.11 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.

#### 7.12 **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.

#### 7.13 **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.

#### 7.14 **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.

#### 7.15 **Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 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, 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 7.15 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.

#### **7.16 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:-

- (a) 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
- (b) such Claims are made by a Financial Institution; and
- (c) 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 7.16 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.

#### **7.17 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 7.17 shall be that no such Claims shall be valid as against a Qualified Insurer.

### **8 GENERAL CONDITIONS**

#### **8.1 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.

## **8.2 Reimbursement**

- 8.2.1 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.
- 8.2.2 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.
- 8.2.3 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.
- 8.2.4 The Insurance must provide that any right of reimbursement contemplated by this clause 8.2 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.

## **8.3 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.

## **8.4 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.

## **8.5 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.

## **9 DISPUTE RESOLUTION**

### **9.1 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 arbitration of a sole arbitrator to be agreed between the parties or, failing agreement between the parties within 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 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 Acts, 1954 to 1998 or any Act amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Acts, 1954 to 1998”.

## 9.2 **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.

## 9.3 **Conduct of Claims**

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 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. The Society may make such a Direction if it is satisfied, in its absolute discretion, that:-

9.3.1 the party requesting the Direction has taken all reasonable steps to resolve the dispute with the other party;

9.3.2 there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured’s favour; and

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

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 Insurance.

**SCHEDULE 2**

**Form of Confirmation of Cover**

**THE LAW SOCIETY OF IRELAND**

**CONFIRMATION OF MINIMUM LEVEL OF COVER**

Name of Firm:

Address of Firm:

Period of Insurance:

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 period of insurance specified above cover in accordance with the Minimum Terms and Conditions (as defined by the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 as amended by the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2009 and the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment (No 2)) Regulations 2009 (hereinafter the "Regulations") 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 QUALIFIED INSURER OR THE BROKER WHO HAS ARRANGED THE COVER**

**SCHEDULE 3**

**Form of Confirmation of Run-Off Cover**

**THE LAW SOCIETY OF IRELAND**

**CONFIRMATION OF RUN-OFF COVER**

Name of Firm:

Address of Firm:

Period of Insurance:

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 period of insurance specified above Run-Off Cover in accordance with the Minimum Terms and Conditions (as defined by the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 as amended by the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2009 and the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment (No 2)) Regulations 2009 (hereinafter "the Regulations") is in place and that the Run-Off 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 QUALIFIED INSURER OR THE BROKER WHO HAS ARRANGED THE RUN-OFF COVER**