

Appendix 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.

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

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

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

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

8.3.3 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.