

Private & Confidential
Subject to Privilege

The Law Society of England and Wales (1)

and

..... **(2)**

Participating Insurer's Agreement 2013



Details of the Insurer

Company name	
Company / syndicate number	
Registered office	
Telephone	
Fax	
Principal contact	

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

Commencement Date:	1 October 2013
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Details for service of notice in accordance with clause 15

Address	
Fax	
Contact name	

Details to appear in Law Society publications

Company/trading name		
Postal address		
Contact names:	Underwriting	Claims
	
Telephone		.....
Fax*		.....
E-mail address*		.....
Website address*		.....
Credit rating and insurer financial strength rating (or state if none)		
Name of rating agency		

* optional

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THIS AGREEMENT is made on

BETWEEN:

- (1) **THE LAW SOCIETY OF ENGLAND AND WALES**, as established by a Royal Charter in 1845 and currently located at 113 Chancery Lane, London WC2A 1PL (the **Law Society**);
- (2) the company details of which are set out on page i (the **Insurer**).

WHEREAS

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

IT IS AGREED AS FOLLOWS

1 Definitions and interpretation

1.1 In this Agreement, unless the context requires otherwise:

Act means the Solicitors Act 1974

Authorised Insurer means:

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;
- (b) a person who carries on an insurance market activity, within the meaning of section 316(3) of that Act;
- (c) an EEA Firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
- (d) a person who does not fall within paragraph (a), (b) or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom

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

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

Cessation Period has the meaning given in the Glossary

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

Claims Report means a report issued in accordance with clause 6.7

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

Declaration Premium Income means the aggregate of Premium Payable in respect of each Policy issued in the Indemnity Period commencing on 1 October 2013 by the Insurer to the extent that such premium relates to cover required in accordance with the Minimum Terms

Extended Indemnity Period has the meaning given in the Glossary

Firm has the meaning given in the Glossary

Glossary means the SRA Handbook Glossary [2012] as made by the Solicitors Regulation Authority Board, those provisions of which are relevant for the Rules as at 1 October 2013 being set out in Schedule 5 to this Agreement

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

Insolvency Event means in relation to a Participating Insurer:

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

Insurance Premium Tax means the tax charged in accordance with Part III Finance Act 1994 or any tax of a similar nature introduced in substitution for, or in addition thereto (including any equivalent taxes payable in a jurisdiction outside the United Kingdom)

Liaison Committee means the committee referred to in clause 8.1

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

multi-year Policy has the meaning given in clause 4.1

Offer means any offer to issue a Policy or quotation for a Policy

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

Policy means a contract of professional indemnity insurance made between the Insurer (whether alone or together with other Participating Insurers) and a Firm complying with the Minimum Terms in accordance with clause 2.2

Policy Period means the period of insurance in respect of which risks may attach under a Policy, but excluding the Extended Indemnity Period and the Cessation Period

Premium Payable means the amount of the premium (including all levies and charges relating to a Policy) due from a Firm to a Participating Insurer (excluding any amount in respect of Insurance Premium Tax) in respect of any Policy issued in the Indemnity Period commencing on 1 October 2013, whether or not actually received by that Participating Insurer, less any amount due to any intermediary acting as agent of the Firm for the purpose of obtaining the professional indemnity insurance but only to the extent that such amount relates to the placing of cover required in accordance with the Minimum Terms and no deduction shall be made of any amount payable to any intermediary in respect of any service which the intermediary provides to, for or on behalf of (whether as agent or otherwise) a Participating Insurer including, without limitation, insurer's services brokerage, market services agreement commission, claim handling fee, fee for the production of documentation, pursuant to any other work transfer arrangement or otherwise arising or any Value Added Tax in respect of such service

Qualifying Insurer means an Authorised Insurer which has entered into a Qualifying Insurer's Agreement with the Society

Qualifying Insurer's Agreement means an agreement setting out the terms and conditions on which a Qualifying Insurer was entitled to provide professional indemnity insurance to solicitors and others in private practice in England and Wales on or before 30 September 2012

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

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

Rules means the SRA Indemnity Insurance Rules 2013 as from time to time modified or amended, the current version of which is set out in Schedule 1

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

Run-off Firm means a Firm which has ceased to practise in circumstances where, in accordance with paragraph 5.4 of the Minimum Terms, run-off cover is not required to be provided by any Participating Insurer

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

Value Added Tax means value added tax as charged in accordance with the provisions of the Value Added Tax Act 1994 or any tax of a similar nature introduced in substitution for, or in addition thereto.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to a clause or schedule are to a clause of, or a schedule to, this Agreement, references to this Agreement include its schedules and references to a part or paragraph are to a part or paragraph of a schedule to this Agreement;

1.2.2 references to this Agreement or any other document or to any specified provision of this Agreement or any other document are to this Agreement, that document or that provision as in force for the time being and as amended from time to time;

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

2 Scope

- 2.1 The Insurer, having agreed to be bound in accordance with the terms of this Agreement, may issue Policies incepting at any time on or after the Commencement Date and before the Run-off Date to Firms on the terms set out in this Agreement.
- 2.2 Each Policy issued by the Insurer shall provide cover which complies at all times during the currency of the Policy (subject to clause 4.1) with the Minimum Terms in force on the later of the date on which:
- (a) the Policy incepts;
 - (b) any extension to the Policy Period takes effect; or
 - (c) the Policy is renewed or replaced.
- 2.3 The Insurer shall issue (or procure the issuing of) a certificate in the form set out in Part A or Part B of Schedule 3 (as the case may require) to each Firm in respect of each Policy issued, renewed or replaced or where the Policy Period is extended (as the case may be) to that Firm by the Insurer within 20 business days of such inception, extension, renewal or replacement of the Policy.
- 2.4 Clause 2.2 shall not limit the right of the Insurer to issue any policy of insurance to a Firm in addition to (and without prejudice to the terms of) any Policy required under the Rules to be held by that Firm.
- 2.5 The Insurer may underwrite Policies jointly with one or more other insurers, provided that each insurer underwriting any such Policy is a Participating Insurer at the date on which the Policy incepts, and provided that the Policy is fully underwritten by Participating Insurers.

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

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

- 2.6 Where the Insurer is the Lead Insurer (as defined in the Minimum Terms) it shall act as such including, without limitation, being responsible for the conduct of claims, advancing defence costs and compromising and arranging for the payment of claims, and it shall be responsible for meeting the reporting requirements set out in clause 6 in relation to the Policy. For the avoidance of doubt, the liability of the Insurer under any Policy shall not be increased by virtue only of the fact that it is acting as Lead Insurer.
- 2.7 The Insurer may not, under the terms on which it offers to issue any Policy or provides any quotation to a Firm (or to any intermediary in respect of a Firm), require that that Firm takes out any other policy (of whatever type or description) with the Insurer, or any other person. The Insurer shall provide each Offer in respect of the cover a Firm is required to maintain under the Rules on a separate and standalone basis from any other offer or quotation of insurance. Where the Insurer provides an Offer for insurance that a Firm is required to maintain under the Rules for a limit of cover which is greater than that required under the Rules, the Insurer shall provide a separate and standalone Offer for the limit of cover equal to that required under the Rules to be maintained by the Firm requesting cover. Each Offer shall state clearly on its face that the Firm is not required to purchase any other insurance in order to accept the Offer in respect of the cover that the Firm is required to maintain under the Rules. The Insurer shall instruct and use its best endeavours to secure that each intermediary to which it provides an Offer in respect of a Firm, provides that Offer to the Firm on the same standalone basis and make it clear that it is not dependent on the Firm's acceptance of any other contract of insurance. Where the Insurer provides an Offer in respect of the cover a Firm is required to maintain under the Rules, it shall not decline to issue the Policy where the Firm declines to purchase any other contract of insurance.
- 2.8 In the event of an inconsistency between the Minimum Terms and the terms of any Policy, the Insurer shall not be entitled to construe the Policy in a way that does not give full effect to the Minimum Terms, and shall, if and to the extent required, amend the terms of any Policy so that such Policy does give full effect to the Minimum Terms.
- 2.9 Clause 2.8 shall be directly enforceable against the Insurer by any insured in his own right, where that insured is required under the Minimum Terms to be insured under a Policy with the Insurer, in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy.
- 2.10 Clause 2.9 shall be without limitation to the right of the Law Society and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.

3 Warranties, representations and undertakings

- 3.1 The Insurer warrants and represents to the Law Society that, both as at the date of this Agreement and as a continuing warranty and representation for the duration of this Agreement:
- (a) it is an Authorised Insurer for the purposes of both effecting and carrying out contracts of insurance; and
 - (b) it shall effect and carry out Qualifying Insurance and shall otherwise conduct its operations and activities in relation thereto at all times in compliance with all applicable

laws and regulations, including but not limited to applicable provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Sex Discrimination Act 1986, the Disability Discrimination Act 1995 and the Equality Act 2010.

3.2 The Insurer undertakes that it shall notify the Law Society in writing immediately if, at any time after the date of this Agreement:

3.2.1 the warranty set out in clause 3.1 ceases to be true in any respect; or

3.2.2 it is the subject of an Insolvency Event.

Agency arrangements

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

4 Multi-year Policies and Firms in the Extended Indemnity Period or the Cessation Period

Multi-year Policies

4.1 The Insurer may issue a Policy in one Indemnity Period which expires in any subsequent Indemnity Period (a **multi-year Policy**) provided that:

4.1.1 the terms of the multi-year Policy permit any variation that may be required in order to reflect any change in the Minimum Terms or in the Rules (whether or not in return for an additional premium), and the Insurer shall give effect to any such variation with effect from the date that the Law Society may require under clause 5;

4.1.2 the Insurer shall give effect to any such variation from the date on which the change in the Minimum Terms or in the Rules (as the case may be) comes into effect to the extent required to give effect to that change; and

4.1.3 the Insurer remains a Participating Insurer in each of the subsequent Indemnity Periods covered by the multi-year Policy and, as and when required to do so by the Law Society, enters into the standard form Participating Insurer's Agreement from time to time in respect of each subsequent Indemnity Period covered by the multi-year Policy.

Firms in the Extended Indemnity Period or the Cessation Period

4.2 Where the Insurer issues a Policy to a Firm that is in the Extended Indemnity Period or Cessation Period under another Policy:

4.2.1 the Policy issued by the Insurer must have an inception date which is the date on which the Firm entered the Extended Indemnity Period in accordance with such other Policy;

4.2.2 the Policy may not exclude or limit the liability of the Insurer by reason of the cover provided to the Firm in respect of the Extended Indemnity Period or Cessation Period under such other Policy, including (without limitation), in respect of any claims made or circumstances notified to the insurer on risk during such period;

4.2.3 the Insurer waives any right to claim contribution from the insurer on risk during the Extended Indemnity Period and/or Cessation Period in respect of any liability that the Insurer may have under the Policy in respect of such period; and

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- 4.2.4 the Insurer agrees to reimburse the insurer on risk during the Extended Indemnity Period and/or Cessation Period in respect of any costs it has incurred in respect of any claims made or circumstances notified to it during such period.
- 4.3 Clause 4.2.3 and 4.2.4 shall be directly enforceable against the Insurer by any insurer on risk in respect of the Extended Indemnity Period or Cessation Period in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy and such right shall be without limitation to the right of the Law Society and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.
- 4.4 Save in the circumstances described in clause 4.2, the Insurer may issue a Policy with an inception date or deemed inception date up to but no more than 30 days prior to the date on which the contract of insurance is made with the Insurer. However, if the contract is made between 1 October 2013 and 30 October 2013 (both dates inclusive), the Insurer may issue a Policy with an inception date or deemed inception date prior to the date on which the contract is made but no earlier than 1 October 2013.

5 Variation

- 5.1.1 The Insurer shall vary the terms of each Policy to give effect to any variation to the Rules, the Glossary and/or the Minimum Terms, such variation to be implemented by the Insurer at the earliest of:
- (a) the start of the Policy Period next following the Commencement Date; or
 - (b) the date of any renewal or replacement of the Policy or any extension to the Policy Period; or
 - (c) the date falling 12 months after the Commencement Date.
- 5.2 Notwithstanding, clause 5.1.1, the Law Society may, where it considers it necessary, vary the terms of any of the Rules, the Glossary, the Minimum Terms or this Agreement during an Indemnity Period and such variation shall be effective from the date falling 2 months after such variation is notified in writing to each Participating Insurer and (if and to the extent that the Law Society considers it appropriate) to Firms.
- 5.3 The Law Society shall, so far as reasonably practicable, present any proposed variation to the Rules, the Minimum Terms or this Agreement to the Liaison Committee for consultation before giving notice of such variation.

6 Reporting

General reporting obligations

- 6.1 If, in the course of dealing with any Firm:
- 6.1.1 the Insurer becomes aware of:
- (a) a material inaccuracy in a proposal form; or
 - (b) any matter or circumstances that would entitle it to avoid or repudiate a Policy but for the provisions of clause 4.1 of the Minimum Terms (and/or the corresponding terms of the Policy);
- other than, in either case, where the Insurer believes any relevant act or omission on the part of the Firm to have been innocent, or
- 6.1.2 the Insurer suspects or becomes aware of dishonesty or fraud on the part of that Firm or any insured under that Firm's Policy and as a result:

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- (a) reserves its position as regards any part of a claim made by that Firm; or
 - (b) notifies that Firm that it will not, or intends not to, indemnify that Firm in full in respect of a claim made by that Firm; or
 - (c) seeks, or reserves its right to seek, reimbursement of any amount paid out under any Policy from any insured,

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

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

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

- 6.2 If any Firm fails to pay any sum due to the Insurer in respect of any Policy, and the Insurer has reasonable grounds for believing that such failure constitutes a wilful refusal to pay such sum, the Insurer shall notify the Law Society in writing of that fact.
- 6.3 The Insurer shall, within 10 business days of any such request being made in writing by the Law Society from time to time, provide to the Law Society confirmation in writing that:
 - 6.3.1 a specified Firm has taken out a Policy issued by that Insurer;
 - 6.3.2 such Policy is in force or was in force on a particular date and the expiry date of the Policy; and
 - 6.3.3 such Policy complies with the Minimum Terms in force on the date on which such Policy incepted, the date that any extension of the Policy Period took effect or for the time being is in force, as the case may require.
- 6.4 The Insurer shall provide to the Law Society such information and data as the Law Society may reasonably require from time to time to enable the Law Society to verify that the Insurer is complying with its obligations under this Agreement, including but not limited to its warranty and undertaking to comply with all applicable laws and regulations, including but not limited to applicable provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Sex Discrimination Act 1986, the Disability Discrimination Act 1995 and the Equality Act 2010. The provisions of clause 16 shall apply in respect of any information provided in accordance with this clause 6.4.
- 6.5 If any of the information provided by the Insurer contained on page i of this Agreement (under the heading "Details of the Insurer") changes after the Commencement Date (including, for the avoidance of doubt, the Insurer's credit rating and insurer financial strength rating), the Insurer shall notify the Law Society and each Firm to which it has issued a Policy as soon as practicable and, in any event, not later than 5 business days after such change.
- 6.6 Without prejudice to its obligation to notify the Law Society, the Insurer shall have complied with the notification requirements under clause 6.5 insofar as they relate to advising each Firm of its credit rating and insurer financial strength rating where, in the reasonable opinion of the Law Society, the Insurer has:

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- (a) for the duration of this Agreement, displayed its credit rating and insurer financial strength rating accurately, in clear terms and in a readily accessible area on its website and updated such information within 5 business days of any variation; and
 - (b) at the inception, renewal or replacement of any Policy or the extension of the Policy Period, provided each Firm to whom it has issued such Policy with sufficient information to enable the Firm to access the credit rating and insurer financial strength rating information maintained on its website.

Claims Reports

- 6.7 The Insurer shall provide a report (a **Claims Report**) to any Firm to which it has issued a Policy, either in the current or in any previous Indemnity Period, within five working days from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:
 - 6.7.1 a summary of:
 - (a) each claim (or series of related claims) made against the Firm of which the Insurer is aware under each Policy; and
 - (b) any circumstances notified to the Insurer by the Firm under each Policy;
 - 6.7.2 the amount reserved by the Insurer against each claim (or series of related claims) or circumstances notified;
 - 6.7.3 the basis on which each such amount is calculated (for example, whether the figure represents a loss actually incurred, an estimate of probable maximum loss, or any other basis of reserving);
 - 6.7.4 whether or not each such amount includes defence costs;
 - 6.7.5 whether each such amount includes or is in excess of the amount of any deductible that may apply in relation to such claim (or series of related claims), and the amount of any such deductible; and
 - 6.7.6 any amounts paid out in relation to each claim, in each case indicating whether such sums include any deductible due from but not paid by the Firm.
- 6.8 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 6.7, but shall not be required to provide any part of that information to the extent that doing so would not be reasonably practicable having regard to the manner in which claims information is stored on the computer systems of the Insurer.

Reports on insured Firms

- 6.9 The Insurer shall provide reports (**Insured Firms Reports**) to the Law Society in the form required from time to time by:
 - 6.9.1 no later than 10 October 2013;
 - 6.9.2 after 1 November 2013 and no later than 10 November 2013; and
 - 6.9.3 thereafter on 10 January, 10 April, 10 July and 10 October in each calendar year in which any Policy written by a Participating Insurer during the Indemnity Period remains in force (or, if any such day is not a business day, on the next following business day immediately following such date),
 - listing: (i) each insured Firm which has obtained a Policy of Qualifying Insurance from the Insurer incepting in the Indemnity Period commencing on 1 October 2013; (ii) each Firm whose

Policy of Qualifying Insurance with the Insurer has expired in or at the commencement of the Indemnity Period commencing on 1 October 2013 and not been renewed, specifying in respect of any such expiration whether the relevant Firm has entered the Extended Indemnity Period or the Cessation Period under the relevant Policy and the date on which this occurred; (iii) and including, in respect of any Firm, that Firm's SRA Firm Head Office ID number.

- 6.10 The form and content of each Insured Firms Report shall be as set out in Schedule 4. If there are no insured Firms required to be included by the Insurer on any Insured Firms Report (or no change to the details relating to such insured Firms), the Insurer shall instead provide a statement to that effect.

Run-off Reports

- 6.11 The Insurer shall provide a report (a **Run-off Report**) to the Law Society and/or Solicitors Indemnity Fund Limited within five business days from being requested to do so, setting out, as at the date specified in the Run-off Report:
- 6.11.1 the name of each Firm in respect of which run-off cover is being provided by the Insurer under a Policy issued either in the Indemnity Period commencing on 1 October 2013 or in any previous Indemnity Period;
- 6.11.2 the date on which the Insurer believes that such run-off cover was triggered; and
- 6.11.3 such other information in relation to such Firms as the Law Society and/or Solicitors Indemnity Fund Limited may reasonably require from time to time.

Declaration Premium Income

- 6.12 The Insurer shall provide to the Law Society by no later than 1 December 2014 a declaration in the form set out in Schedule 2 providing a figure for its Declaration Premium Income for the Indemnity Period ending on 30 September 2014.
- 6.13 The Insurer warrants and represents to the Law Society that:
- 6.13.1 to the best of the knowledge information and belief of the Insurer the Declaration Premium Income declared pursuant to clause 6.12 does not materially understate the Declaration Premium Income as at the date of such declaration; and
- 6.13.2 it has taken all reasonable steps to verify the accuracy of the declaration of its Declaration Premium Income made pursuant to clause 6.12 and that such declaration has been made in good faith.

Successor insurance election

- 6.14 Where an Insured Firm makes an election pursuant to clause 5.6 of the Minimum Terms, the Insurer shall give notice to the Society in writing of that election not later than seven days after the Insured Firm informs the Insurer of the election and that election has become effective.

7 Claims handling and enforcement

- 7.1 The Insurer shall act at all times in all respects in accordance with any Claims Handling Guidelines, and in particular (but without limitation), the Insurer shall:
- 7.1.1 pay claims without avoidable delay after liability under the Policy has been established and the amount payable by the Insurer has been agreed; and
- 7.1.2 act at all times with the utmost good faith in the course of its dealings both with the solicitors' profession generally and with Firms which are its policyholders.

7.2 The Insurer shall not treat any Policy as void, repudiated, terminated or otherwise ineffective by reason of any act or omission on the part of any Firm or any person acting for or on behalf of that Firm if and to the extent that doing so would result in that Firm not having cover in accordance with the Minimum Terms.

7.3 Clause 7.2 shall be without prejudice to any rights of reimbursement which the Insurer may have under the terms of any Policy against that Firm or any insured by reason of any such act or omission.

8 Liaison committee

8.1 The Law Society shall establish a committee to include, without limitation, representatives from Participating Insurers and the Law Society (the **Liaison Committee**).

8.2 The purpose of the Liaison Committee shall include:

8.2.1 reviewing the arrangements relating to the provision of compulsory professional indemnity insurance to members of the solicitors' profession generally; and

8.2.2 considering proposed amendments to such arrangements, including proposed variations to the Rules, the Minimum Terms or the standard form Participating Insurer's Agreement.

8.3 The terms of reference relating to the Liaison Committee shall be as determined by the Law Society from time to time.

9 Right of inspection

9.1 The Insurer shall maintain Records in respect of each Policy until final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of that Policy, or for such longer period as the Law Society may, in the case of any specified Policy, reasonably require.

9.2 The Law Society (and its agents and advisers from time to time) shall be entitled to have access to any Records or, for the purpose of verifying or obtaining any information provided or required to be provided by the Insurer to the Law Society, records of the Insurer at all times on reasonable notice during normal business hours.

10 Co-operation

10.1 The Insurer shall at all times co-operate with the Law Society, and with any person or body of persons carrying out any functions on behalf of the Law Society, so as to enable the Law Society to discharge its regulatory functions.

10.2 The Insurer authorises the Law Society to publish, whether on any of its websites or otherwise, in such manner and form as it may determine, details of the Insurer, as set out on page i (under the heading "Details of the Insurer") or as the Insurer may advise the Law Society from time to time, including in accordance with clause 6.5.

10.3 The Insurer undertakes that it shall provide to the Law Society, and shall specify on each Offer it provides to a Firm, the rating or ratings it has from any credit rating agency (or agencies, as the case may be) at that time (or, in the absence of any such credit rating, a statement to that effect).

11 Term

11.1 The Law Society may by giving notice in writing to the Insurer at any time terminate forthwith the right granted to the Insurer under clause 2.1 if:

11.1.1 the Insurer is in fundamental breach of its obligations under this Agreement; or

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- 11.1.2 either of the events referred to in clause 3.2 occurs; or
- 11.1.3 the Insurer is in material breach of its obligations under this Agreement; and
- (a) (where such breach is capable of being remedied), the Insurer has failed to remedy such breach within such reasonable time as the Law Society has specified; or
 - (b) the Insurer has previously been in material breach of its obligations under this Agreement on at least one occasion during the previous six months or on more than one occasion within the previous two years.
- 11.2 The Law Society may by giving not less than 3 months' notice in writing to the other at any time terminate the right granted to the Insurer under clause 2.1. The Insurer may surrender such right in the same manner and on the same notice.
- 11.3 The effect of any notice given under clause 11.1 or 11.2 shall be that:
- 11.3.1 (in the case where notice has been given under clause 11.1) the right granted to the Insurer under clause 2.1 shall terminate on:
- (a) the date of that notice; or
 - (b) the date on which either of the events referred to in clause 3.2 occurs (where applicable);
- whichever is the earlier; or
- 11.3.2 (in the case where notice has been given under clause 11.2) the right granted to the Insurer under clause 2.1 shall terminate on the date of the end of the first Indemnity Period ending not less than three months after the date on which notice under clause 11.2 is given.
- 11.4 The date on which the right granted to the Insurer under clause 2.1 terminates in accordance with clause 11.3 shall be referred to as the **Run-off Date**.
- 11.5 With effect from the Run-off Date, the Insurer shall cease to be a Participating Insurer and accordingly the Insurer shall not write any Policy which incepts or renews after the Run-off Date, or hold itself out as being a Participating Insurer after the Run-off Date.
- 11.6 Clauses 11.1 and 11.3 shall each be without prejudice to the rights of either party under this Agreement either before or after the Run-off Date in respect of any act or omission of any other party under this Agreement, which shall otherwise remain in full force and effect.
- 11.7 This Agreement shall terminate upon the final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of all of the Policies written by the Insurer under this Agreement, but without prejudice to the rights of any party under this Agreement as at that date.

12 Disputes as to insurer

- 12.1 In the event of any dispute arising as to whether a claim is or would be properly payable by the Insurer (whether alone or together with any other Participating Insurer or Participating Insurers) rather than by any other Participating Insurer or Participating Insurers, Qualifying Insurer or Qualifying Insurers, the Solicitors' Indemnity Fund or the Solicitors' Compensation Fund:
- 12.1.1 the Insurer shall seek to agree as soon as practicable with each of the other parties which party to the dispute shall conduct any claim, advance defence costs and, if appropriate, compromise and pay any such claim, whether on the basis that the party to whom the claim was first notified should do so or otherwise; or

-
- 12.1.2 where the parties to a dispute cannot agree in accordance with clause 12.1.1 who should handle a claim the Insurer or Participating Insurer who was first notified of the claim shall conduct such claim, advance defence costs and, if appropriate, compromise and pay any such claim.

In either case the dispute shall be referred to arbitration in accordance with clause 13, and the Insurer irrevocably consents to any such dispute being arbitrated in a single arbitration with each of the other parties to the dispute participating.

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

13 Other disputes and dispute resolution

- 13.1 Any dispute or claim arising out of or in connection with this Agreement, including any question regarding its validity or termination, shall be determined by a sole arbitrator, to be appointed by agreement between the parties to the arbitration, or failing such agreement within 21 days of a written nomination being made by one of the parties to the arbitration, by the President of the Chartered Institute of Arbitrators. In the case of any dispute referred to arbitration under clause 12.1, the sole arbitrator shall be a Queen's Counsel with experience of disputes arising out of professional indemnity policies.
- 13.2 In the event of the arbitrator becoming unable or unwilling to act as such, any replacement shall be appointed in a like manner to that stipulated in clause 13.1.
- 13.3 The arbitration shall be held in London and the language of the arbitration shall be the English language. The seat of the arbitration shall be in England. It is further expressly agreed that the right to appeal to the High Court or to apply to such court for the determination of a preliminary point of law is excluded.
- 13.4 Within 30 days of the constitution of the tribunal, the claimant shall deliver to the respondent, and to the tribunal, a statement of case containing particulars of the dispute or claim and written submissions in support thereof together with any documents relied upon.
- 13.5 Within 30 days of receiving the claimant's statement of case the respondent shall deliver to the claimant and to the tribunal a statement of case in answer, together with any counterclaim, written submissions in support thereof and any documents relied upon.
- 13.6 Within 30 days of receipt by the claimant by any statement of counterclaim, the claimant may deliver to the respondent, and to the tribunal, a reply to the counterclaim, together with any additional documents relied upon.

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- 13.7 As soon as practical after its constitution, and in any event no later than 30 days after receiving the respondent's statement of case or the claimant's reply to the respondent's counterclaim, as the case may be, the tribunal shall convene a meeting with the parties to the arbitration or their representatives to determine the issues to be decided and the procedure to be followed in the arbitration.
- 13.8 The procedure to be followed in the arbitration shall be as agreed by the parties to the arbitration or, in default of agreement, as determined by the tribunal. However, the following procedural matters shall in any event be taken as agreed:
- 13.8.1 the tribunal may in its discretion hold a hearing and make an award in relation to any preliminary issue at the request of any party to the arbitration, and shall do so at the joint request of all of the parties to the arbitration;
- 13.8.2 the tribunal shall hold a hearing, or hearings, relating to substantive issues unless the parties to the arbitration agree otherwise in writing;
- 13.8.3 the tribunal shall issue its final award within 60 days of the last hearing of the substantive issues in dispute between the parties to the arbitration.
- 13.9 In the event of the failure by any party to the arbitration to appear or to present its case within the prescribed time at any stage of the proceedings, or in the event of default by any party to the arbitration in respect of any procedural order made by the tribunal, the tribunal shall have power to proceed with the arbitration and make its award, after giving notice to each party to the arbitration.

14 Assignment

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

15 Notices

- 15.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by first-class post pre-paid or by fax, to each of:
- 15.1.1 the Insurer, at the address, fax number or email set out in and for the attention of the person named on page i; and
- 15.1.2 the Solicitors Regulation Authority, at The Cube, 199 Wharfside Street, Birmingham B1 1RN
- | | |
|-----------|---|
| Email | richard.collins@sra.org.uk |
| Attention | Executive Director of Policy, Strategy and Research |
- or to such other address, number or addressee as each party may by notice advise from time to time to each of the other parties, but without prejudice to the effectiveness of any notice already given in accordance with this clause 15.
- 15.2 Any notice given in accordance with clause 15.1 shall be deemed to be given:
- 15.2.1 if delivered personally, when left at the relevant address referred to in clause 15.1;
- 15.2.2 if sent by mail, two business days after it was posted;

15.2.3 if sent by fax, on completion of its transmission

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

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

16 Confidentiality

16.1 Except as provided in this Agreement, each party shall treat as confidential all information relating to persons insured by the Insurer, where such information would enable that person to be identified, provided that, where the Insurer reports to the Law Society any matter referred to in Rule 17.1 of the Rules:

16.1.1 the Law Society shall keep all such information confidential;

16.1.2 the Law Society shall not (except where and to the extent required by law or in the proper performance by the Law Society of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the Law Society or any of its subsidiaries; and

16.1.3 any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the Law Society or otherwise.

16.2 The provisions of clause 16.1 shall not prevent the Law Society making use of any information referred to in that clause for the purpose of bringing disciplinary proceedings against any person.

16.3 Notwithstanding any other provision of this Agreement the Law Society may, without limitation and in its absolute discretion, disclose and/or make available for public inspection the identity of the Insurer and any firm to which it provides a Policy pursuant to the terms of this Agreement. Nothing in this Agreement shall prohibit the Law Society from making such a disclosure, nor give rise to any liability of the Law Society, for breach of confidence or otherwise.

17 Counterparts

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

18 Entire agreement

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

19 Third party rights

19.1 Except as provided by clauses 2.9 and 4.3 no third party shall have any rights under or in connection with this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise.

20 Applicable law

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

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

Schedule 1 - SRA Indemnity Insurance Rules 2013

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

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Part 1 General

Rule 1 Authority and commencement

- 1.1 These Rules are made on 13 June 2013 by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.
- 1.2 These Rules come into force on 1 October 2013.
- 1.3 These Rules require *solicitors, RELs, RFLs, recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *participating insurers* with effect from 1 October 2013.

Commentary: These Rules apply to:

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

carrying on private practice in England and Wales as a firm at any time after 1 October 2013. Refer to the interpretation provisions in Rule 3 and the SRA Handbook Glossary 2012 (the Glossary) and to the definitions in the Glossary for guidance on the exact meanings of these terms.

- 1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 2013.

Commentary: Before 1 September 2000, firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, firms have been required to take out insurance in accordance with the Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules. From 1 October 2013, firms must take out insurance in accordance with these Rules with one or more participating insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.

- 1.5 The SRA Indemnity Insurance Rules 2012 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2013 but they shall remain in force in respect of the *indemnity period* from 1 October 2012 to 30 September 2013 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

Commentary: You should refer to previous Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules in relation to earlier indemnity periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2010 and the SRA Indemnity Insurance Rules 2011 and 2012.

Rule 2 Citation

- 2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 2013.

Rule 3 Definitions and interpretation

- 3.1 The SRA Handbook Glossary 2012 (the Glossary) shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined in accordance with the Glossary;
 - (b) terms shall be interpreted in accordance with the Glossary;
 - (c) a reference to a Rule is to a Rule forming part of these Rules; and
 - (d) these Rules will be governed by and interpreted in accordance with English law.

Part 2 Responsibility and monitoring

Rule 4 Obligation to effect insurance

- 4.1 All *firms* carrying on a *practice* during any *indemnity period* beginning on or after 1 October 2013 must take out and maintain *qualifying insurance* under these Rules.
- 4.2 A *firm* must:
- (a) obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* that provides cover incepting on and with effect from the expiry of the *policy period*;
 - (b) if the *firm* has been unable to obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* in accordance with Rule 4.2(a), obtain a *policy* of *qualifying insurance* during or prior to the expiry of the *extended indemnity period* that provides cover incepting on and with effect from the expiry of the *policy period*; and
 - (c) if the *firm* has been unable to obtain a *policy* of *qualifying insurance* prior to the expiry of the *extended indemnity period* in accordance with Rule 4.2(b), cease practice promptly, and by no later than the expiration of the *cessation period*, unless the *firm* obtains a *policy* of *qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *firm* including, without limitation, any carried out in breach of Rule 5.2.
- 4.3 A *solicitor* or *REL* is not required to take out and maintain *qualifying insurance* under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the *practice* of another *firm* (including without limitation as an *appointed person*), where that *firm* is required by these Rules to take out and maintain *qualifying insurance*.

Commentary: Under these Rules, firms have a continuing obligation to ensure that they have *qualifying insurance* in place at all times with effect from 1 October 2013. Refer to the definitions of *practice*, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a participating insurer. A list of participating insurers appears on the website of the SRA at www.sra.org.uk, and is also available from the SRA. Contact details appear at the end of the introductory commentary.

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

If a firm, on or before the expiry of the policy period, fails to obtain a policy of qualifying insurance from a participating insurer commencing on the day following such expiration, the firm's participating insurer is required to extend cover under

the existing policy for a further 30 days. If a firm fails to obtain an alternative policy of qualifying insurance during or prior to the expiration of the 30 day extended indemnity period it must cease practice within a further period of 60 days (known as the cessation period) unless the firm obtains a policy of qualifying insurance on or before the expiry of the cessation period which provides cover that incept or is backdated to incept with effect on and from the expiry of the policy period. Any such policy of qualifying insurance must cover all activities carried out in connection with private legal practice by the firm, including any carried out during the cessation period in breach of Rule 5.2. During the cessation period, the firm (and its principals, employees, consultants and agents) may only engage in activities in connection with private legal practice on behalf of the firm to discharge its obligations within the scope of the existing instructions the firm held before the cessation period commenced or which are necessary in connection with the discharge of such obligations. Disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period. The firm's participating insurer is required to provide cover during the cessation period which, as a minimum, satisfies the MTC.

The SRA will work with the firm to ensure that it has ceased practice prior to the expiration of the 60 day cessation period. Firms must be aware that the participating insurer under the existing policy will not be required to provide any cover beyond this period except for run-off cover for a period of six years commencing on the expiry of the firm's final policy of qualifying insurance (excluding any extended indemnity period and cessation period (as may be applicable)).

Note that, under the MTC, a policy, once taken out, cannot be cancelled unless:

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

Most recognised bodies and licensed bodies (in respect of their regulated activities) are required to obtain cover complying with the MTC and with a sum insured of £3 million, rather than £2 million for other firms. The definition of "relevant recognised body" and "relevant licensed body" in these Rules indicates which recognised bodies and licensed bodies this requirement applies to.

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

Rule 5 Responsibility

- 5.1 Each firm carrying on a practice on or after 1 October 2013, and any person who is a principal of such a firm, must ensure that the firm has in place and maintains qualifying insurance at all times.

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

- 5.2 Each firm that has been unable to obtain a policy of qualifying insurance prior to the expiration of the extended indemnity period, and any person who is a principal of such a firm, must ensure that the firm, and each principal or employee of such firm, undertakes no activities in connection with private legal practice and accepts no instructions in respect of any such activities during the cessation period save to the extent that the activity in connection with private legal practice is undertaken to

discharge its obligations within the scope of the *firm's existing instructions* or is necessary in connection with the discharge of such obligations.

Rule 6 Insolvency of participating insurer

- 6.1 If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with other *participating insurers*) and that *participating insurer* is the subject of an *insolvency event* then, subject to any waiver under Rule 19.1, the *firm* and any *person* who is a *principal* of the *firm* must ensure that the *firm* has in place *qualifying insurance* with another *participating insurer* which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an *insolvency event*.

Commentary: It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a participating insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has qualifying insurance with a participating insurer which is the subject of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.

Rule 7 Monitoring

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

Rule 8 RELs

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

Part 3 The ARP

Rule 9 [Deleted]

Rule 10 [Deleted]

Rule 11 [Deleted]

Rule 12 [Deleted]

Rule 13 Power to collect contribution from firms

- 13.1 Every *firm* and/or *principal* shall make contributions in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the *SRA* in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available on behalf of *firms* and/or *principals* to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

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- 13.2 Any unpaid contribution under Rule 13.1 may be recovered as a debt due to the *Society*. The *SRA* may recover any unpaid contribution from a *licensed body*, and may require *licensed bodies* to make such further contributions as the *SRA* considers necessary in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

Part 4[Deleted]

Rule 14[Deleted]

Rule 15[Deleted]

Part 5 Disciplinary offences and reporting

Rule 16 Disciplinary consequences of failure to comply with these Rules

- 16.1 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any *firm* or any *person* who is at the relevant time a *principal* in a *firm* to:
- (a) be in *policy default*; and
 - (b) undertake any activities in connection with *private legal practice* in breach of Rule 5.2.

Rule 17 Use of information

- 17.1 Any *participating insurer* shall, in relation to any *firm* which applies to it for *qualifying insurance*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:
- (a) any failure on the part of the *firm* or any *person* who is a *principal* of that *firm* to pay any sum on or before the date specified in these Rules or to reimburse any amount falling within a *policy* excess which has been paid out by a *participating insurer* to a *claimant*;
 - (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
 - (c) the fact that the *firm* has become or is believed to have become a *run-off firm*;
 - (d) any matter or circumstances that would entitle the *firm's participating insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
 - (e) any dishonesty or fraud suspected by a *participating insurer* on the part of any *insured*; and
 - (f) any *claim* of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

Commentary: All firms are deemed to have consented to their participating insurer bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be applicable to the firm. Any such information is subject to the confidentiality provisions of Rule 17.4.

- 17.2 The *Council* may require any *participating insurer* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.

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- 17.3 Each *firm* shall notify the *Society* (or such *person* as the *Society* may notify to the *firm* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which:
- (a) the *firm* enters the *extended indemnity period* under its *policy*;
 - (b) the *firm* enters the *cessation period* under its *policy*, and
 - (c) the *firm* obtains a *policy qualifying insurance* where the *firm* is in the *extended indemnity period* or the *cessation period*, and in such case the notification shall include the name of the *participating insurer* who has issued the *policy of qualifying insurance* and the *policy number*.
- 17.4 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1, 17.2 and 17.3:
- (a) the *Society* shall keep all such information confidential;
 - (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any *person* other than a duly authorised employee of the *Society* or any of its subsidiaries; and
 - (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.
- 17.5 The provisions of Rule 17.4 shall not prevent the *Society* from:
- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any *person*; or
 - (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any *person* entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the *Legal Ombudsman*).
- 17.6 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's participating insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

Rule 18 Details of participating insurer

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

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

Commentary: A firm, and each principal in that firm, is required to provide details of that firm's policy of qualifying insurance to any person who asserts a claim against anyone insured under that firm's policy. Under Rule 17, the SRA has the power to disclose information regarding a firm's participating insurer where it considers it appropriate to do so.

Part 6 General powers of the Council

Rule 19 Waiver powers

19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.

- (a) Any application by any *person* for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 must be made in writing to the *Society* as soon as reasonably practicable.
- (b) No application by any *person* for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the *Society* as soon as reasonably practicable and in any event no later than 28 February 2002.
- (c) Any appeal against any decision made by the *Society* in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 must be made in writing to the *Society* within 21 days from the date of the decision.
- (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the *Society* in respect of such application shall not relieve any *person* from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 pending the determination of any such application or appeal.

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

19.2 The *Council* shall have power to treat any *firm* as complying with any Rule or Rules for the purposes of the SA notwithstanding that the *firm* has failed to comply with a Rule or Rules where such non-compliance is regarded by the *Council* in a particular case or cases as being insignificant.

19.3 For the purposes of the SA (including without limitation section 10 of that Act), any *person* who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

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

Part 7 Other obligations

Rule 20 Accountants' reports

- 20.1 Any accountant's report which a *solicitor, REL or RFL* who is a *principal* in a *practice* or a *recognised body* or a *licensed body* is required to deliver to the *Society* under section 34 of the *SA* or paragraph 8 of Schedule 14 to the *Courts and Legal Services Act 1990* or under section 83(5)(h) of and paragraph 20 of Schedule 11 to the *LSA* containing such information as is prescribed by rule 35 of the *Solicitors' Accounts Rules 1998* (as amended from time to time), or any rules (including, without limitation, the *SRA Accounts Rules*) which replace the *Solicitors' Accounts Rules 1998* in whole or in part, must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) that the *firm* has one or more certificates of *qualifying insurance* (or in respect of any period prior to 1 October 2013, that the *firm* has been issued with one or more policies by the *ARP manager*).

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

Appendix 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1 Scope of cover

1.1 Civil liability

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

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

1.2 Defence costs

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

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

1.3 The insured

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

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

1.4 Prior practice

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

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

1.5 The insured - prior practice

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

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

1.6 Successor practice

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

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

unless run-off cover is provided in accordance with clause 5.6.

1.7 The insured - successor practice

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

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

regulated activities) or *sole practitioner* referred to in paragraph (a) or *company* referred to in paragraph (b); and

- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or *person* referred to in paragraph (c) or (d).

1.8 Award by regulatory authority

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

2 Limit of insurance cover

2.1 Any one claim

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

2.2 No limit on defence costs

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

2.3 Proportionate limit on defence costs

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

2.4 No other limit

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

2.5 One claim

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

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

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

and

- (b) all *claims* against one or more *insured* arising from one matter or transaction

will be regarded as one *claim*.

2.6 Multiple underwriters

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

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

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

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

3 Excesses

3.1 The excess

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

3.2 No deductibles

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

3.3 Excess not to apply to defence costs

The excess must not apply to *defence costs*.

3.4 Funding of the excess

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

3.5 One claim

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

3.6 Excess layers

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

4 Special conditions

4.1 No avoidance or repudiation

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

4.2 No adjustment or denial

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

4.3 No cancellation

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

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

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

4.4 No set-off

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

4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than: (i) as contemplated by clause 6.1; or (ii) where the *insured*, having entered the *extended indemnity period* or *cessation period*, obtains a *policy of qualifying insurance* that incepts from and with effect from the expiration of the *policy period*. For the avoidance of doubt and subject to the provisions of the *participating insurer's agreement*, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.

4.6 No retroactive date

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

4.7 Successor practice - 'double insurance'

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

4.8 Advancement of defence costs

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

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

4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer.

4.10 Conduct of a claim pending dispute resolution

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

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

it may in its absolute discretion make such a direction.

4.11 Minimum terms and conditions to prevail

The insurance must provide that:

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

5 Extended indemnity period and run-off cover

5.1 Extended indemnity period

The insurance must provide cover for the duration of the *extended indemnity period* where an *insured firm* has not, prior to the expiration of the *policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

5.2 Cessation period

The insurance must provide cover for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended indemnity period*, obtained insurance complying with the

MTC and incepting on and with effect from the day immediately following the expiration of the *policy period*.

5.3 Scope of cover during the extended indemnity period and the cessation period

The cover to be provided in respect of the *extended indemnity period* referred to in clause 5.1 and the *cessation period* referred to in clause 5.2 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but may be subject to the limits, exclusions and conditions of the insurance which are in accordance with the *MTC*).

5.4 Run-off cover

The insurance must provide run-off cover:

- (a) subject to clause 5.4(b), in the event of a *cessation*. For these purposes, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*; and
- (b) with effect from the commencement of the *extended indemnity period* in the event that the *insured firm* has not, on or before the expiration of the *cessation period* referred to in clause 5.2, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

5.5 Scope of run-off cover

The run-off cover referred to in clause 5.4 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but may be subject to the limits, exclusions and conditions of the insurance which are in accordance with the *MTC*) on the basis that the *period of insurance* extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, includes the *extended indemnity period* and *cessation period*).

5.6 Succession

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

- (a) to be insured under the run-off cover referred to in clause 5.4(a); or
- (b) provided that there is insurance complying with these *MTC* in relation to that *successor practice*, to be insured as a *prior practice* under such insurance.

If the *insured firm* fails to make an election and/or fails to pay any premium due under the terms of the *policy*, before its *cessation*, clause 5.6(b) above shall apply.

The insurance must also provide that where an *insured firm* makes an election pursuant to this clause 5.6, the *insurer* shall give notice to the *Society* in writing of the election not later than seven days following the receipt by the *insurer* of the *insured firm's* election and that election has become effective and the *insured firm* shall irrevocably consent to that notification.

5.7 Suspended practices

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

- (a) there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;

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

6 Exclusions

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

6.1 Prior cover

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

6.2 Death or bodily injury

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

6.3 Property damage

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

6.4 Partnership disputes

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

6.5 Employment breaches, discrimination, etc.

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

6.6 Debts and trading liabilities

Any:

- (a) trading or personal debt of any *insured*; or
- (b) legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any

legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or

- (c) guarantee, indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

6.7 Fines, penalties, etc

Any:

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

6.8 Fraud or dishonesty

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

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

6.9 Directors' or officers' liability

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

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

6.10 War and terrorism, and asbestos

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

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

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

7 General conditions

7.1 As agreed

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

7.2 Reimbursement

The insurance may provide that each *insured* who:

- (a) committed or condoned (whether knowingly or recklessly):
 - (i) non-disclosure or misrepresentation; or
 - (ii) any breach of the terms or conditions of the insurance; or
 - (iii) dishonesty or any fraudulent act or omission; or
- (b) undertakes, either itself or by any of its principals, employees, consultants or agents or any person on its behalf, any activity during the *cessation period* in connection with *private legal practice* save to the extent that the activity is undertaken to discharge any of its obligations within the scope of its *existing instructions* or is necessary in connection with the discharge of any such obligation,

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

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*.

The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any *person* referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such *person* if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that *person* having committed or condoned (whether knowingly or recklessly) the non-disclosure, misrepresentation, breach, dishonesty, act or omission.

7.3 Reimbursement of defence costs

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

7.4 Reimbursement of the excess

The insurance may provide for those *persons* who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any *person* held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an

insured's behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

7.5 Reimbursement of moneys paid pending dispute resolution

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

7.6 Withholding assets or entitlements

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

7.7 Premium

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

8 Definitions and interpretation

8.1 The SRA Handbook Glossary 2012 (the **Glossary**) shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined in accordance with the Glossary;
- (b) terms shall be interpreted in accordance with the Glossary;
- (c) references to the *Society* include the *SRA* and any body or *person* which succeeds in whole or in part to the functions of the *Society* or the *SRA* and any delegate of the *Society*, the *SRA* or any such body or *person*; and
- (d) a reference to a director includes a member of an *LLP*.

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

Appendix 2 **[Deleted]**

Appendix 3

Special provisions for RELs

1 If:

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

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

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

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

4.5 No 'other insurance' provision

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

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

4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.

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

4.10 Conduct of a claim pending dispute resolution

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

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

- (d) Clause 4.12 shall be added:

4.12 Period of insurance

The *period of insurance* must not expire prior to the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clause shall be added:

6.11 Partial Home State Cover

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

and in these Rules the following definition shall be added:

Partial Home State Cover has the meaning given in Appendix 3 to the SRA Indemnity Insurance Rules 2013.

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

Appendix 4 **[Deleted]**

Schedule 2
Declaration Premium Income by participating insurer

INDEMNITY YEAR 2013/2014

To be completed by the Participating Insurer and returned to the Law Society by no later than 1 December 2014 in respect of the Indemnity Period ending on 30 September 2014.

Name of Participating Insurer

.....

Declaration Premium Income

£.....

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

Signed:

Print name:

For and on behalf of the Participating Insurer named above

Date:

**Schedule 3
Certificates of Insurance**

Part A

**CERTIFICATE OF QUALIFYING INSURANCE
(In accordance with Rule 4 SRA Indemnity Insurance Rules 2013)**

INDEMNITY YEAR 2013/2014

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

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

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

Signed: _____
Print name: _____
For and on behalf of. _____
Date: _____

*delete if not applicable

Part B

CERTIFICATE OF ADDITIONAL PROFESSIONAL INDEMNITY INSURANCE
(In accordance with Appendix 3 SRA Indemnity Insurance Rules 2013)

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

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

Details of Insurance under Registered European Lawyers' home professional rules:		
Name of insurer(s), fund or scheme	.....
Period of insurance	From to both days inclusive	
Policy number(s) or insurer's or broker's reference(s)	.....

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

Signed: _____

Print name: _____

For and on behalf of. _____

Date: _____

*delete if not applicable

**Schedule 4
Pro forma Insured Firms Report**

(Clause 6.10)

SRA Firm Head Office ID No.	Firm Name	Full Postcode (including space)	Policy Number	Inception Date	Expiry Date	Policy renewed, policy expired or new business	Firm in Extended Indemnity Period or Cessation Period		COMPULSORY LAYERS			
							Extended Indemnity Period (EIP) or Cessation Period (CP)	Date of entry	1st £1m layer - % written	2nd £1m layer (£1m in excess of £1m) - % written	3rd £1m layer (£1m in excess of £2m) - % written	

Schedule 5

Glossary definitions and interpretation used in Rules

Definitions

AJA means the Administration of Justice Act 1985.

appellate body means the body with the power, by virtue of an order under section 80(1) of the LSA, to hear and determine appeals against decisions made by the SRA acting as a *licensing authority*.

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

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

ARP means the Assigned Risks Pool, namely, the arrangements by which certain firms obtained professional indemnity insurance against civil liability up to 30 September 2013 pursuant to and on the terms set out the SRA Indemnity Insurance Rules 2012 (and prior variations thereof).

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

assets includes money, documents, wills, deeds, investments and other property.

authorised insurer means:

- (i) a *person* who has permission under Part IV of FSMA to effect or carry out contracts of insurance of a relevant class;
- (ii) a *person* who carries on an insurance market activity, within the meaning of section 316(3) of FSMA;
- (iii) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to FSMA, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
- (iv) a *person* who does not fall within paragraph (i), (ii) or (iii) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the UK,

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

body corporate means a company, an LLP or a partnership which is a legal person in its own right.

building society means a building society within the meaning of the Building Societies Act 1986.

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

cessation period means the period commencing on the expiry of the *extended indemnity period*

where, during the *extended indemnity period* the relevant *firm* has not ceased *practice* or obtained a *policy of qualifying insurance* incepting with effect on and from the day immediately following expiration of the *policy period*, and ending on the date which is the earlier to occur of:

- (i) the date, if any, on which the *firm* obtains a *policy of qualifying insurance* incepting with effect on and from the day immediately following expiration of the *policy period*;
- (ii) the date which is 90 days after the commencement of the *extended indemnity period*; or
- (iii) the date on which the *insured firm's practice* ceases.

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

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

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

Companies Acts means the Companies Act 1985 and the Companies Act 2006.

company means a company incorporated in an *Establishment Directive state* and registered under the *Companies Acts* or a *societas Europaea*.

Council has the meaning given in section 87 of the *SA*.

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

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

and does not include any internal or overhead expenses of the *insured firm* or the *insurer* or the cost of any *insured's* time.

difference in conditions policy means a contract of professional indemnity insurance, made between one or more *participating insurers* and a *firm*, which provides cover including the *MTC* as modified in accordance with paragraph 2 of Appendix 3 to the *SRA Indemnity Insurance Rules*.

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

- (i) in a two-tier system, a member of the management organ and a member of the supervisory

organ; and

- (ii) in a one-tier system, a member of the administrative organ.

EEA means European Economic Area.

employee means any person other than a *principal*:

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

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

Establishment Directive means the Establishment of Lawyers Directive 98/5/EC.

Establishment Directive state means a state to which the *Establishment Directive* applies.

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

existing instructions means instructions to carry out *legal activities* received by a *firm* from a client, which the *firm* has accepted, on terms that have been agreed by the client, prior to the *firm* becoming subject to cover under the *cessation period*.

extended indemnity period means the period commencing at the end of the *policy period* and ending on the date which is the earlier to occur of:

- (i) the date, if any, on which the firm obtains a *policy of qualifying insurance* incepting on and with effect from the day immediately following the expiration of the *policy period*;
- (ii) the date which is 30 days after the end of the *policy period*; or
- (iii) the date on which the *insured firm's practice* ceases.

firm means:

- (A) any *recognised body* (as constituted from time to time); or
- (B) any *solicitor* or *REL* who is a *sole practitioner*, unless that *sole practitioner* is a *non-SRA firm*; or
- (C) any *partnership* (as constituted from time to time) which is eligible to become a *recognised body* and which meets the requirements applicable to *recognised bodies* set out in the *SRA Practice Framework Rules* and the *SRA Authorisation Rules*, unless that *partnership* is a *non-SRA firm*; or
- (D) any *licensed body* in respect of its *regulated activities*,

whether before or during any relevant *indemnity period*.

FSMA means the Financial Services and Markets Act 2000.

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

in-house practice means *practice* as a *solicitor*, *REL* or *RFL* (as appropriate) in accordance with Rules 1.1(c)(ii), 1.1(d)(ii), 1.1(e), 1.2(f), 2.1(c)(ii), 2.1(d)(ii), 2.1(e), 2.2(f), 3.1(b)(ii) or 3.1(c)(ii) of the *SRA Practice Framework Rules* and “in-house” shall be construed accordingly.

insolvency event means in relation to a *participating insurer*:

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

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

insured firm means the *firm* which contracted with the *insurer* to provide the insurance.

insured firm’s practice means:

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

insurer means the underwriter(s) of the insurance.

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

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

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

licensed body means a body licensed by the *SRA* under Part 5 of the *LSA*.

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

the LSA.

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

manager means:

- (i) a *member* of an *LLP*;
- (ii) a *director* of a *company*;
- (iii) a *partner* in a *partnership*; or
- (iv) in relation to any other body, a member of its governing body.

member means:

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

MTC means the minimum terms and conditions with which a *policy* of *qualifying insurance* is required by the *SRA Indemnity Insurance Rules* to comply, a copy of which is annexed as Appendix 1 to those Rules.

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

- (i) authorised or capable of being authorised to practise by another *approved regulator*; or
- (ii) not capable of being authorised to practise by any *approved regulator*.

overseas means outside England and Wales.

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

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

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

partnership means a body that is not a *body corporate* in which *persons* are, or are held out as, *partners*, save that in the *MTC* means an unincorporated *insured firm* in which *persons* are or are held out as *partners* and does not include an *insured firm* incorporated as an *LLP*.

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

person includes a body of *persons* (corporate or unincorporated).

policy means a contract of professional indemnity insurance made between one or more *persons*, each of which is a *participating insurer*, and a *firm*.

policy default

- (i) means a failure on the part of a *firm* or any *principal* of that *firm*:
 - (A) to pay for more than two months after the due date for payment all or any part of the premium or any other sum due in respect of a *policy*; or
 - (B) to reimburse within two months a *participating insurer* in respect of any amount falling within a *firm's policy* excess which has been paid on an insured's behalf to a claimant by a *participating insurer*,
- (ii) for the purposes of this definition, the due date for payment means, in respect of any *policy* or any payment to be made under any *policy*:
 - (A) the date on which such payment fell due under the terms of the *policy* or any related agreement or arrangement; or
 - (B) if a *firm* was first required under the *SIIR* to effect such a *policy* prior to the date on which it did so, the date if earlier on which such payment would have fallen due had such *policy* been effected by the *firm* when it was first required to do so under the *SIIR*.

policy period means the *period of insurance* in respect of which risks may attach under a *policy*, but excluding the *extended indemnity period* and the *cessation period*

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

principal means:

- (A) where the *firm* is or was:
 - (I) a *sole practitioner* - that practitioner;
 - (II) a *partnership* - each *partner*;
 - (III) a *company* with a share capital - each *director* of that *company* and any *person* who:
 - (01) is held out as a *director*; or
 - (02) beneficially owns the whole or any part of a share in the *company*; or
 - (03) is the ultimate beneficial owner of the whole or any part of a share in the *company*;
 - (IV) a *company* without a share capital – each director of that *company* and any *person* who:
 - (01) is held out as a *director*; or
 - (02) is a *member* of the *company*; or
 - (03) is the ultimate owner of the whole or any part of a *body corporate* or other legal person which is a *member* of the *company*;
 - (V) an *LLP* – each member of that *LLP*, and any *person* who is the ultimate owner of the whole or any part of a *body corporate* or other legal person which is a *member* of the *LLP*.
- (B) where a *body corporate* or other legal person is a *partner* in the *firm*, any *person* who is within paragraph (A)(III) of this definition (including sub paragraphs (01) and (03) thereof), paragraph (A)(IV) of this definition (including sub paragraphs (01) and (03) thereof), or paragraph (A)(V) of

this definition.

prior practice means each *practice* to which the *insured firm's practice* is ultimately a *successor practice* by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such *practice* which has elected to be insured under run-off cover in accordance with clause 5.6(a) of the *MTC*.

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

- (i) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a *partnership* permitted to practise in England and Wales by Rule 12 of the Solicitors' Code of Conduct 2007 or by the *SRA Practice Framework Rules*, a *recognised body* or a *licensed body* (in respect of its *regulated activities*); and
- (ii) the provision of such services as a secondee of the *insured firm*; and
- (iii) any *insured* acting as a personal representative, *trustee*, attorney, notary, insolvency practitioner or in any other role in conjunction with a *practice*; and
- (iv) the provision of such services by any *employee*; and
- (v) the provision of such services pro bono publico;

but does not include:

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

private practice:

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

but does not include:

- (C) *practice* carried on by a *solicitor* or *REL* in the course of employment with an employer other

than a *firm*; or

- (D) *practice* carried on through a *non-SRA firm*; or
- (E) discharging the functions of any of the following offices or appointments:
 - (I) judicial office;
 - (II) Under Sheriffs;
 - (III) members and clerks of such tribunals, committees, panels and boards as the *Council* may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
 - (IV) Justices' Clerks;
 - (V) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria; or
 - (VI) such other offices as the *Council* may from time to time designate;
- (F) *practice* consisting only of providing professional services without remuneration for friends, relatives, or to companies wholly owned by the *solicitor* or *REL*'s family, or registered charities; or
- (G) in respect of a sole *solicitor* or a sole *REL*, *practice* consisting only of:
 - (I) providing professional services without remuneration for friends, relatives, or to companies wholly owned by the *solicitor* or *REL*'s family, or registered charities; and/or
 - (II) administering oaths and statutory declarations; and/or
 - (III) activities which could constitute *practice* but are done in the course of discharging the functions of any of the offices or appointments listed in paragraphs (E)(I) to (VI) above.

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

recognised body means a body recognised by the *SRA* under section 9 of the *AJA*.

Regulated Activities Order means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

regulated activity means:

- (A) any reserved legal activity;
- (B) any other legal activity; and
- (C) any other activity in respect of which a licensed body is regulated pursuant to Part 5 of the *LSA*.

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

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

- (i) an unlimited company, or an *overseas* company whose members' liability for the company's

- debts is not limited by its constitution or by the law of its country of incorporation; or
- (ii) a nominee company only, holding *assets* for clients of another *practice*; and
 - (A) it can act only as agent for the other *practice*; and
 - (B) all the individuals who are *principals* of the *licensed body* are also *principals* of the other *practice*; and
 - (C) any fee or other income arising out of the *licensed body* accrues to the benefit of the other *practice*; or
 - (iii) a *partnership* in which none of the *partners* is a limited company, an *LLP* or a legal person whose *members* have limited liability.

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

- (i) an unlimited company, or an *overseas* company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (ii) a nominee company only, holding *assets* for clients of another *practice*; and
 - (A) it can act only as agent for the other *practice*; and
 - (B) all the individuals who are *principals* of the *recognised body* are also *principals* of the other *practice*; and
 - (C) any fee or other income arising out of the *recognised body* accrues to the benefit of the other *practice*; or
- (iii) a *partnership* in which none of the *partners* is a limited company, an *LLP* or a legal person whose *members* have limited liability; or
- (iv) a *sole practitioner* that is a *recognised body*.

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

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

run-off firm means a *firm* or former *firm* which has ceased to practise in circumstances where, in accordance with clause 5.4 of the *MTC*, run-off cover is not required to be provided by any *participating insurer*.

SA means the Solicitors Act 1974.

SIF means the Solicitors Indemnity Fund.

SIIR means the Solicitors' Indemnity Insurance Rules 2000 to 2010, the *SRA* Indemnity Insurance Rules 2011 to 2012, *the SRA Indemnity Insurance Rules* or any rules subsequent thereto.

societas Europaea means a European public limited liability company within the meaning of Article 1 of Council Regulation 2157/2001/EC.

Society means the Law Society, in accordance with section 87 of the *SA*.

sole practitioner means a *solicitor* or an *REL* practising as a sole *principal*, and does not include a

solicitor or an *REL* practising *in-house*.

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

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

SRA Accounts Rules means the SRA Accounts Rules 2011.

SRA Authorisation Rules means the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011.

SRA Financial Services (Scope) Rules means the SRA Financial Services (Scope) Rules 2001.

SRA Indemnity Insurance Rules means the SRA Indemnity Insurance Rules 2013.

SRA Indemnity Rules means the SRA Indemnity Rules 2012.

SRA Practice Framework Rules means the SRA Practice Framework Rules 2011.

SRA Training Regulations means the SRA Training Regulations 2011.

successor practice

- (i) means a *practice* identified in this definition as 'B', where:
 - (A) 'A' is the *practice* to which B succeeds; and
 - (B) 'A's owner' is the owner of A immediately prior to transition; and
 - (C) 'B's owner' is the owner of B immediately following transition; and
 - (D) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal *practice*.
- (ii) B is a successor practice to A where:
 - (A) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
 - (B) (where A's owner was a *sole practitioner* and the transition occurred on or before 31 August 2000) - the *sole practitioner* is a *principal* of B's owner; and/or
 - (C) (where A's owner was a *sole practitioner* and the transition occurred on or after 1 September 2000) - the *sole practitioner* is a *principal* or *employee* of B's owner; and/or
 - (D) (where A's owner was a *recognised body* or a *licensed body* (in respect of its *regulated activities*)) - that body is a *principal* of B's owner; and/or
 - (E) (where A's owner was a *partnership*) - the majority of the *principals* of A's owner have

become *principals* of B's owner; and/or

- (F) (where A's owner was a *partnership* and the majority of *principals* of A's owner did not become *principals* of the owner of another legal *practice* as a result of the transition) - one or more of the *principals* of A's owner have become *principals* of B's owner and:
- (I) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
 - (II) B is carried on from the same premises as A; and/or
 - (III) the owner of B acquired the goodwill and/or assets of A; and/or
 - (IV) the owner of B assumed the liabilities of A; and/or
 - (V) the majority of staff employed by A's owner became *employees* of B's owner.
- (iii) Notwithstanding the foregoing, B is not a successor practice to A under paragraph (ii) (B), (C), (D), (E) or (F) if another *practice* is or was held out by the owner of that other *practice* as the successor of A or as incorporating A, provided that there is insurance complying with the *MTC* in relation to that other *practice*.

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

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

trainee solicitor means any person receiving workplace training with the express purpose of qualification as a *solicitor*, at an authorised *training establishment*, under a *training contract*, and "trainee" should be construed accordingly.

training contract means a written contract, complying with the *SRA Training Regulations*, between one or more *training establishment* and a *trainee solicitor*, setting out the terms and conditions of the workplace training that the *trainee solicitor* will receive.

training establishment means an organisation, body, *firm*, *company*, *in-house practice* or individual authorised by *us* under the *SRA Training Regulations* Part 2 – Trainer Provider Regulations to take and train a *trainee solicitor*.

Tribunal means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the *SA* but references to the Tribunal do not include the Tribunal when it is performing any function as an *appellate body*.

us means *SRA*, and "our" and "ourselves" should be construed accordingly.

General Interpretation

Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine gender include the feminine and vice versa and references to the masculine or feminine include the neuter;
- (c) the word "body" includes a *sole practitioner*, and a special body within the meaning of section 106 of the *LSA*;
- (d) any explanatory notes, guidance notes and/or commentary are for the purposes of guidance

only;

- (e) any headings are for ease of reference only;
- (f) "in writing" includes any form of written electronic communication normally used for business purposes, such as emails;
- (g) references to certificates, letters or other forms of written communication include references to those in both electronic and hard copy format; and
- (h) a reference to any statute, statutory provision, code or regulation includes any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it.

SIGNED by)
.....)
for and on behalf of **THE LAW SOCIETY OF**)
ENGLAND AND WALES

.....
Duly authorised

SIGNED by)
.....)
for and on behalf of)
.....)

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Duly authorised