

Appendix 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1 Scope of cover

1.1 Civil liability

Subject to the limits in clause 2, 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, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case 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 Variation for multi-year policies

The terms of the insurance must provide that the *insurer* shall vary the terms of the insurance to give effect to any variation to the *SRA Indemnity Insurance Rules*, the Glossary and/or the *MTC*, such variation to be implemented by the *insurer*:

- (a) on the date of any renewal or replacement of the insurance or any extension to the *period of insurance occurring in that indemnity period*; or
- (b) on each date falling in 18 month intervals from the commencement of the *policy period* where no variation has occurred by reason of clause 4.11(a) within the immediately preceding 18 month period.

save that no variation shall be required under 4.11(b) where the date on which variation would have been required is a date within the *extended indemnity period* or the cessation period.

4.12 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* (including any amendment pursuant to clause 4.11); and

- (b) any provision which is inconsistent with these *MTC* (including any amendment pursuant to clause 4.11) 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

Subject to clause 5.8, the insurance must provide run-off cover:

- (a) in the event of a *cessation* that occurs during or on expiration of the *policy period*;
- (b) in the event of a *cessation* that occurs during the *extended indemnity period* or the *cessation period*; or
- (c) from the expiration of the *cessation period*;

and for the purposes of this clause 5.4 and clause 5.8, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*.

5.5 Scope of run-off cover

The run-off cover referred to in clause 5.4 must:

- (a) indemnify each *insured* in accordance with clauses 1.1 to 1.8;
- (b) provide a minimum level of insurance cover in accordance with clauses 2.1 and 2.3;
- (c) be subject to the exclusions and conditions of the insurance applicable in accordance with the *MTC*; and
- (d) extend the *period of insurance* 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, including the *extended indemnity period* and *cessation period*), save that in respect of run-off cover provided under clause 5.4(c), such run-off cover shall not operate to indemnify any *insured* for civil liability arising from acts or omissions of such *insured* occurring after the expiration of the *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*.

5.8 Transfer to another approved regulator

Clause 5.4 above does not apply where the *insured firm* becomes an *authorised non-SRA firm* provided that the *approved regulator*, with which the *authorised non-SRA firm* is authorised, is a signatory to a protocol on terms agreed by the *SRA* which relates to switching between *approved regulators*.

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*.

6.11 International trade sanctions

The *insurer* shall be deemed not to provide cover and shall not be liable to pay any *claim* or provide any benefit under the insurance to the extent that the provision of such cover, payment of such *claim* or provision of such benefit would expose the *insurer* to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

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) any breach of the duty to make a fair presentation of the risk, 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 failure to make a fair presentation of the risk, 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 failure to make a fair presentation of the risk, 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 failure to make a fair presentation of the risk, 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.