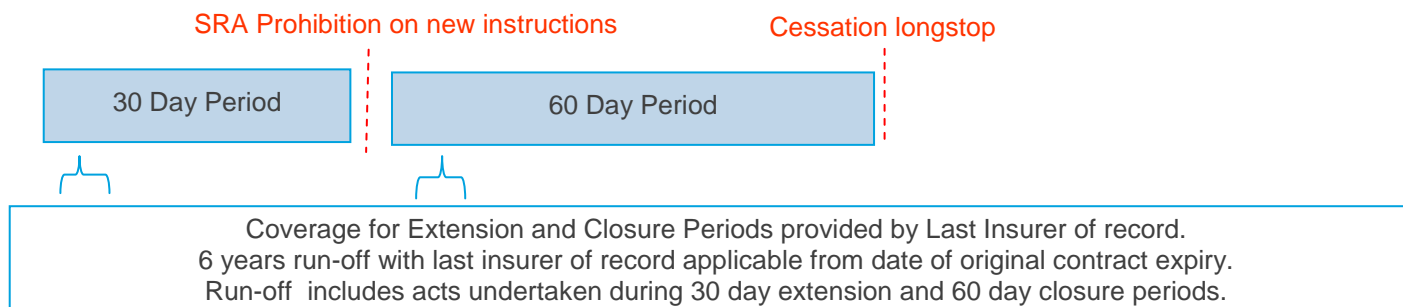


## Professional Indemnity Insurance Transition Plan

Oct 2011	Oct 2012	Oct 2013	Oct 2014
ARP Applied & Non-Applied Firms	ARP for Applied Firms with shared liability between insurers and profession	No ARP for 2013/14 indemnity period onwards	
	Comp Fund for Non-Applied Firms	Comp. Fund for Non-Applied	
ARP period reduced to 6 months	ARP period remains at 6 months	Last QI provides 3 Months full coverage	
Common renewal date	Common renewal date	Variable renewal dates	
Remove provision for recalculation of ARP participation in event of insurer insolvency	Last insurer of record provided for in QIA for 2013 renewal	Last Insurer of record retains risk	
		Run-off for work undertaken prior to cessation, applicable from date of contract	

### Insurer of record mechanism for firms that fail to obtain qualifying insurance at 2013 renewal



Private & Confidential  
Subject to Privilege

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**The Law Society of England and Wales** (1)

**and**

..... (2)

---

**Participating Insurer’s Agreement 2013**

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### Details of the Insurer

<b>Company name</b>	
<b>Company / syndicate number</b>	
<b>Registered office</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>Principal contact</b>	

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

<b>Commencement Date:</b>	<b>1 October 2013</b>
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### Details for service of notice in accordance with clause 15

<b>Address</b>	
<b>Fax</b>	
<b>Contact name</b>	

### Details to appear in Law Society publications

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

\* optional

## Contents

Clause	Page
1	Definitions and interpretation .....3
2	Scope.....6
3	Warranties, representations and undertakings .....7
4	Multi-year Policies and Firms in the Extended Indemnity Period or the Cessation Period .....8
5	Variation .....9
6	Reporting .....9
7	Claims handling and enforcement .....12
8	Liaison committee.....13
9	Right of inspection.....13
10	Co-operation .....13
11	Term.....13
12	Disputes as to insurer.....14
13	Other disputes and dispute resolution .....15
14	Assignment.....16
15	Notices .....16
16	Confidentiality .....17
17	Counterparts.....17
18	Entire agreement .....17
19	Third party rights.....17
20	Applicable law .....18
<b>Schedule 1 - SRA Indemnity Insurance Rules [2013]</b> .....	<b>19</b>
Appendix 1 SRA Minimum Terms and Conditions of Professional Indemnity Insurance .....	28
Appendix 2 [Deleted] .....	39
Appendix 3 Special provisions for RELs .....	40
Appendix 4 [Deleted] .....	42
<b>Schedule 2 Declaration Premium Income by participating insurer</b> .....	<b>43</b>
<b>Schedule 3 Certificates of Insurance</b> .....	<b>44</b>
<b>Schedule 4 Pro forma Insured Firms Report</b> .....	<b>46</b>
<b>Schedule 5 Glossary definitions and interpretation used in Rules as at 1 October 2013</b> .....	<b>47</b>

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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

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**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

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**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;

- 
- 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



Indemnity Limit under Policy	Permitted primary layer(s) under Policy	Permitted excess layer(s) under Policy
£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

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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

- 
- 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:

- 
- (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

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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.

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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



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- 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;

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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.

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## **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.

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## 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.

<b>Part 1 General</b> .....	<b>20</b>
Rule 1 Authority and commencement .....	20
Rule 2 Citation .....	20
Rule 3 Definitions and interpretation .....	21
<b>Part 2 Responsibility and monitoring</b> .....	<b>21</b>
Rule 4 Obligation to effect insurance.....	21
Rule 5 Responsibility .....	22
Rule 6 Insolvency of participating insurer .....	23
Rule 7 Monitoring.....	23
Rule 8 RELs.....	23
<b>Part 3 The ARP</b> .....	<b>23</b>
Rule 9 [Deleted] .....	23
Rule 10 [Deleted] .....	23
Rule 11 [Deleted] .....	23
Rule 12 [Deleted] .....	23
Rule 13 Power to collect contribution from firms .....	23
<b>Part 4 [Deleted]</b> .....	<b>24</b>
Rule 14 [Deleted] .....	24
Rule 15 [Deleted] .....	24
<b>Part 5 Disciplinary offences and reporting</b> .....	<b>24</b>
Rule 16 Disciplinary consequences of failure to comply with these Rules.....	24
Rule 17 Use of information .....	24
Rule 18 Details of participating insurer.....	25
<b>Part 6 General powers of the Council</b> .....	<b>26</b>
Rule 19 Waiver powers.....	26
<b>Part 7 Other obligations</b> .....	<b>27</b>
Rule 20 Accountants' reports.....	27
<b>Appendix 1 SRA Minimum Terms and Conditions of Professional Indemnity Insurance</b> .....	<b>28</b>
1 Scope of cover.....	28
2 Limit of insurance cover.....	30
3 Excesses .....	31
4 Special conditions.....	31
5 Extended indemnity period and run-off cover.....	33
6 Exclusions.....	35
7 General conditions.....	37
8 Definitions and interpretation.....	38
<b>Appendix 2 [Deleted]</b> .....	<b>39</b>
<b>Appendix 3 Special provisions for RELs</b> .....	<b>40</b>
<b>Appendix 4 [Deleted]</b> .....	<b>42</b>

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## Part 1 General

### Rule 1 Authority and commencement

- 1.1 These Rules are made on [•] 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.

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## 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](http://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*

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*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



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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*;
  - (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.

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- 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.
- 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

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- (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.

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*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.*

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## 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*.

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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

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*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 transactionsand
- (b) all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.



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## 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.

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#### 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.

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#### 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

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*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;

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- (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

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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,

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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

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*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.



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**Appendix 2 [Deleted]**

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## 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.

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- (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*.

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**Appendix 4 [Deleted]**

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**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.

<b>Name of Participating Insurer</b>	.....
<b>Declaration Premium Income</b>	£.....

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.

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

[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.

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

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

[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 as at 1 October 2013

#### 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 *SIIIR* 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 *SIIIR*.

***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.

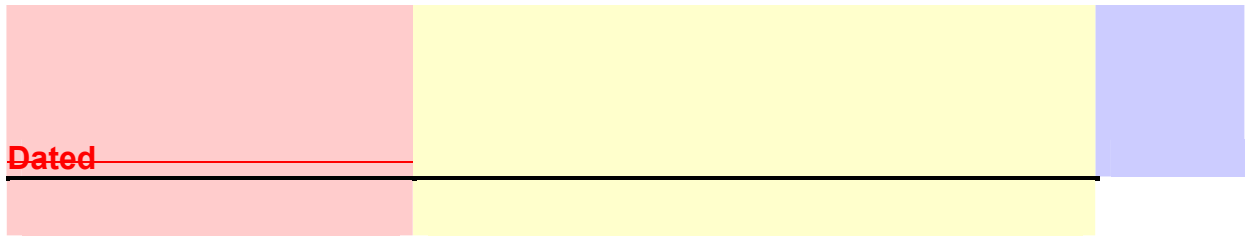
**SIGNED** by ..... )  
..... )  
for and on behalf of **THE LAW SOCIETY OF** )  
**ENGLAND AND WALES**

.....  
Duly authorised

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

.....  
Duly authorised

Private & Confidential  
Subject to Privilege



The Law Society of England and Wales (1)  
~~Capita Commercial Insurance Services Limited~~ (2)  
and  
..... (32)

~~Qualifying~~Participating Insurer's Agreement  
~~2012~~2013



Details of the Insurer

<b>Company name</b>	
<b>Company / syndicate number</b>	
<b>Registered office</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>Principal contact</b>	

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

<b>Commencement Date:</b>	1 October <del>2012</del> 2013
---------------------------	--------------------------------

Details for service of notice in accordance with clause 15

<b>Address</b>	
<b>Fax</b>	
<b>Contact name</b>	

Details to appear in Law Society publications

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

\* optional

## Contents

Clause	Page
1 Definitions and interpretation .....	<del>4</del> <u>3</u>
2 Scope .....	<del>4</del> <u>6</u>
3 Warranties, representations and undertakings.....	<del>5</del> <u>7</u>
4 <a href="#">Multi-year Policies and Firms in the Extended Indemnity Period</a> <del>6</del> <a href="#">or the Cessation Period</a> ...	<del>8</del>
5 Variation .....	<del>6</del> <u>9</u>
6 Reporting.....	<del>7</del> <u>9</u>
7 Claims handling and enforcement.....	<del>9</del> <u>12</u>
8 Liaison committee .....	<del>9</del> <u>13</u>
9 Right of inspection .....	<del>10</del> <u>13</u>
10 Co-operation .....	<del>10</del> <u>13</u>
11 Term.....	<del>10</del> <u>13</u>
12 Disputes as to insurer.....	<del>11</del> <u>14</u>
13 Other disputes and dispute resolution .....	<del>12</del> <u>15</u>
14 Assignment.....	<del>12</del> <u>16</u>
15 Notices.....	<del>13</del> <u>16</u>
16 Confidentiality.....	<del>13</del> <u>17</u>
17 Counterparts .....	<del>14</del> <u>17</u>
18 Entire agreement .....	<del>14</del> <u>17</u>
19 Third party rights.....	<del>14</del> <u>17</u>
20 Applicable law.....	<del>14</del> <u>18</u>
Schedule 1 <del>The Assigned Risks Pool</del> .....	<del>15</del>
Trust Deed.....	<del>24</del>
Schedule 2 <del>ARP Master Policy</del> .....	<del>30</del>
Appendix 1 ARP Policy .....	<del>32</del>
Schedule 3 - SRA Indemnity Insurance Rules <del>2012</del> .....	<del>52</del> <u>[2013]</u> <del>19</del>
Appendix 1 SRA Minimum Terms and Conditions of Professional Indemnity Insurance .....	<del>68</del> <u>28</u>
Appendix 2 <del>Rating schedule for 2012/2013</del> .....	<del>79</del> <u>[Deleted]</u> <del>39</del>
Appendix 3 Special provisions for RELs .....	<del>85</del> <u>40</u>
Appendix 4 <del>[Deleted]</del> .....	<del>42</del>
Schedule 4 <del>Declarations of Relevant</del> <a href="#">2 Declaration</a> Premium Income by <del>qualifying</del> <a href="#">participating</a> insurer.....	<del>87</del> <u>43</u>
Schedule 5 <del>3</del> <a href="#">Certificates of Insurance</a> .....	<del>89</del> <u>44</u>
Schedule 6 <del>4</del> <a href="#">Pro forma Insured Firms Report</a> .....	<del>91</del> <u>46</u>
Schedule 7 <del>Binding Authority Agreement</del> .....	<del>92</del>
Schedule 8 <del>5</del> <a href="#">Glossary definitions and interpretation used in Rules as at 1 October</a> <del>2012</del> ....	<del>130</del> <u>[2013]</u> <del>47</del>

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) **CAPITA COMMERCIAL INSURANCE SERVICES LIMITED** (a company registered in England and Wales under number 02845397), whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent BR3 4TU (**Capita**); and~~
- (2) ~~(3)~~ 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 **Qualifying 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 participate in the ARP~~, 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

~~**ARP** means the arrangements described in Schedule 1 and in the Rules~~

~~**ARP Firm** means a Firm which is insured through the ARP under the terms of an ARP Policy~~

~~**ARP Manager** means the manager of the ARP, being Capita and/or such person as is appointed from time to time by the Law Society to carry out all or any particular functions of the manager of the ARP in accordance with paragraph 2.1 of Schedule 1, or the Law Society and any such person~~

~~**ARP Master Policy** means the policy issued to the Law Society by the Qualifying Insurers on the terms set out in Schedule 2 pursuant to which the Qualifying Insurers underwrite the ARP Policies and participate in the ARP in accordance with Schedule 1~~

~~**ARP Policy** means a contract of professional indemnity insurance issued under the ARP Master Policy by the ARP Manager on behalf of Qualifying Insurers to an ARP Firm, in the form set out in Appendix 1 of Schedule 2, or as may be prescribed by the Law Society from time to time, and includes an ARP Run-off Policy~~

~~**ARP Run-off Policy** means a contract of professional indemnity insurance issued by the ARP Manager on behalf of Qualifying Insurers to a Run-off Firm in the ARP, in the form described in Part 2 of Appendix 1 of Schedule 2~~

**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

~~**Firm in Default** 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 ~~2012~~2013 being set out in Schedule ~~85~~ 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

~~**Initial Participation** means, in respect of any Qualifying Insurer, the amount, expressed as a percentage, resulting from the initial calculation made in accordance with paragraph 3.3 of Schedule 1~~

**Insolvency Event** means in relation to a ~~Qualifying~~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 [4.24.1](#)

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

~~**Percentage Liability** means, in respect of any Qualifying Insurer, the extent to which it is liable to make payments pursuant to the ARP during an Indemnity Period, expressed as a percentage, and calculated in accordance with paragraph 6.2 of Schedule 1~~

~~**Percentage Participation** means, in respect of any Qualifying Insurer, the extent to which it participates in the ARP during an Indemnity Period, expressed as a percentage, and calculated in accordance with paragraph 3.5 of Schedule 1~~

**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 ~~Qualifying~~ Participating Insurers) and a Firm complying with the Minimum Terms in accordance with clause ~~2.3, including (where the context requires) an ARP Policy~~ [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 ~~any~~an Authorised Insurer which has entered into ~~an agreement with the Law Society to be~~ a Qualifying Insurer ~~which remains in force for the purpose of effecting new Policies'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 ~~2012~~2013 as from time to time modified or amended, the current version of which is set out in Schedule ~~3~~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 ~~Qualifying~~Participating Insurer

**Run-off Insurer** means an Insurer which has ceased to be a ~~Qualifying~~Participating Insurer by virtue of clause ~~11.11~~

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;
- 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 The Insurer hereby enters into the ARP Master Policy on the terms set out in Schedule 2 and thereby underwrites the ARP Policies and participates in the ARP in accordance with the terms of Schedule 1 and the Rules. The Insurer agrees to comply with the Binding Authority in (or substantially in) the form set out in Schedule 7.~~

- 2.2 ~~2.3~~ Each Policy issued by the Insurer shall provide cover which complies at all times during the currency of the Policy (subject to clause 4.24.1) with the Minimum Terms in force on the later of the date on which:

(a) the Policy incepts;

(b) ~~(a)~~ any extension to the Policy ~~incepts~~ Period takes effect; or

(c) ~~(b)~~ the Policy is renewed or replaced.

- 2.3 ~~2.4~~ The Insurer shall issue (or procure the issuing of) a certificate in the form set out in Part A or Part B of Schedule ~~5~~3 (as the case may require) to each Firm in respect of each Policy issued ~~(or~~ 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 ~~the~~such inception ~~(or~~ extension, renewal) or replacement of the Policy.

- 2.4 ~~2.5~~ Clause ~~2.32.2~~ 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 ~~2.6~~ The Insurer may underwrite Policies jointly with one or more other insurers, provided that each insurer underwriting any such Policy is a Qualifying Participating Insurer at the date on which the Policy incepts, and provided that the Policy is fully underwritten by Qualifying 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 ~~2.7~~ 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 ~~2.8~~ 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 ~~2.9~~ 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 ~~2.10~~ Clause ~~2.9~~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 ~~2.11~~ Clause ~~2.10~~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~~ Indemnity Period

- ~~4.1 Each Policy written by the Insurer shall (subject to clause 4.2 and clause 5 of the Minimum Terms) expire at the end of an Indemnity Period, irrespective of the date on which the Policy is written or incepted.~~ **Multi-year Policies and Firms in the Extended Indemnity Period or the Cessation Period**

### Multi-year Policies

- ~~4.1~~ **4.1** ~~4.2~~ The Insurer may issue a Policy in one Indemnity Period which expires ~~at the end of~~ in any ~~Indemnity Period~~ subsequent ~~to the~~ Indemnity Period ~~in which it incepts~~ (a **multi-year Policy**) provided that:
- ~~4.1.1~~ **4.1.1** ~~4.2.1~~ 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~~ **4.1.2** ~~4.2.2~~ 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~~ **4.1.3** ~~4.2.3~~ the Insurer remains a Qualifying 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 Qualifying 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~~ **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~~ **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~~ **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~~ **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
- ~~4.2.4~~ **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 ~~The Insurer may not issue a Policy with an expiry date earlier than the end of the Indemnity Period in which that Policy incepts.~~ 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 ~~The~~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 ~~2012~~2013 and 30 October ~~2012~~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 ~~2012~~2013.

## 5 Variation

~~5.1 The Law Society may from time to time vary the terms of any of the Rules, the Glossary, the Minimum Terms or this Agreement, provided that, except in exceptional circumstances, in each case:~~

- 5.1.1 ~~save in respect of the Glossary, any such variation shall be effective from the start of the Indemnity Period next following the one in which such variation is notified;~~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:

~~5.1.2 in the case of any variation to the Glossary, the variation may take effect during any Indemnity Period, and in such circumstances, shall apply to any Policy incepting after the date of such variation;~~

(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 ~~5.1.3 any such variation shall be~~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 Qualifying Participating Insurer and (if and to the extent that the Law Society considers it appropriate) to Firms, by no later than two months before the date on which it is to come into effect; and,

~~5.1.4 in the case of any variation to this Agreement, the same variation is made to all agreements with Qualifying Insurers and Run-off Insurers.~~

- 5.3 ~~5.2~~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, ~~the Insurer becomes aware of:~~

- 6.1.1 the Insurer becomes aware of:

(a) 6.1.1 a material inaccuracy in a proposal form; or



- (b) ~~6.1.2~~ 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 ~~if, in the course of dealing with any Firm,~~ 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:

- (a) ~~6.1.3~~ reserves its position as regards any part of a claim made by that Firm; or
- (b) ~~6.1.4~~ 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) ~~6.1.5~~ 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 ~~6.1.2~~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 ~~6.1.3~~6.1.2(a) to ~~6.1.5~~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 ~~and the ARP Manager~~ 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 inception ~~or was renewed,~~ 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 ~~five (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:
- (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 ~~asuch~~ 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) ~~6.7.1 a summary of~~ each claim (or series of related claims) made against the Firm of which the Insurer is aware ~~made against the Firm under each Policy; 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 ~~no later than 15 October 2012 and 1 December 2012, listing:~~

#### 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).

~~6.9.4~~ 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 2012; and 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.

~~6.9.2 each Firm which obtained a Policy from the Insurer in the immediately preceding Indemnity Period but which did not renew its, or purchase a new, Policy with the Insurer for the Indemnity Period commencing on 1 October 2012.~~

~~6.10 The Insurer shall provide further Insured Firms Reports to the Law Society by no later than and as at 31 March 2013, 30 June 2013 and 30 September 2013 of any Firms which have obtained Qualifying Insurance from the Insurer for the current Indemnity Period, which were not included on any previous Insured Firms Report issued by the Insurer for the current Indemnity Period.~~

6.10 ~~6.11~~ The form and content of each Insured Firms Report shall be as set out in Schedule ~~6.4~~. 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 ~~6.12~~ 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 ~~6.12.1~~ 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 ~~current~~ Indemnity Period commencing on 1 October 2013 or in any previous Indemnity Period;

6.11.2 ~~6.12.2~~ the date on which the Insurer believes that such run-off cover was triggered; and

6.11.3 ~~6.12.3~~ 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 ~~6.13~~ 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 ~~Qualifying~~Participating Insurers, and the Law Society, ~~and the ARP Manager~~ (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 ~~Qualifying~~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 ~~or ARP Manager~~, 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
- 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 ~~Qualifying~~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 ~~Qualifying~~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 ~~Qualifying Participating~~ Insurer or ~~Qualifying 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 ARP Manager~~ the Insurer or Participating Insurer who was first notified of the claim shall conduct ~~the such~~ claim, advance defence costs and, if appropriate, compromise and pay any such claim ~~in the normal course on behalf of each relevant Qualifying Insurer (including where applicable the Insurer in its own right or by virtue of its participation in the ARP).~~
- 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 ~~and, where applicable, the ARP Manager~~, direct ~~that the ARP Manager shall~~ 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 ~~the ARP Manager~~ 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 ~~Qualifying Participating~~ Insurer or ~~Qualifying Participating~~ Insurers), then:
- 12.3.1 the Insurer shall promptly reimburse ~~to the ARP Manager~~ the other Participating Insurer or Participating Insurers all of the costs and expenses howsoever incurred by ~~the ARP Manager~~ 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 ~~ARP Manager~~ 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.
- 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, ~~496~~199 Wharfside Street, Birmingham B1 1RN
- |           |   |
|-----------|---|
| Email     | richard.collins@sra.org.uk  |
| Attention | Executive Director of Policy, Strategy and Research; <del>and</del> |

~~15.1.3 (if appropriate) to the ARP Manager, at 40 Dukes Place, London EC3A 7NH~~

~~Fax number 0870 162 4509~~  
~~Attention Tracey Garrett;~~

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, ~~the ARP Manager~~, or any person acting for or on its behalf.

## 19 Third party rights

19.1 Except as provided by ~~clause 2.10 and by paragraph 2.1 of Schedule 1~~, [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~~

### ~~The Assigned Risks Pool~~

~~An Assigned Risks Pool (ARP) shall be established and underwritten by the Qualifying Insurers in accordance with the terms of the ARP Master Policy and this Schedule 1, and be operated by the ARP Manager which shall carry out its functions in accordance with the following paragraphs of this Schedule 1 and the Rules.~~

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

~~**Actual Premium Payable** means the Premium Payable by a Firm provided that, where the Premium Payable in respect of a Firm exceeds the Premium Cap (as applicable), the Premium Payable in respect of that Firm for the purpose of the calculations in paragraph 3.7 of this Schedule, shall equal the amount of the applicable Premium Cap;~~

~~**Aggregate Excess** means, in respect of any Policy that a Firm is required to maintain under the Rules, the maximum aggregate sum of all potential excesses (howsoever expressed) whether or not insured by a Qualifying Insurer (or any other person) for which the Firm is liable under the Policy;~~

~~**ARP Liability** means the aggregate liability of all Qualifying Insurers to make payments, or to meet any demand for payment from the ARP Manager, in accordance with paragraph 6 (other than paragraph 6.4) of this Schedule 1 in respect of the ARP to the extent that it relates to the Indemnity Period commencing on 1 October 2012;~~

~~**ARP Master Policy Payment** means the amount payable by the Law Society under the terms of the ARP Master Policy which shall be applied by the ARP Manager in discharge of (in whole or in part) the ARP Liability in accordance with paragraph 1.2 of this Schedule;~~

~~**Calculated Premium Payable** means the amount of premium calculated as payable by a Firm to a Qualifying Insurer in accordance with paragraph 1 of Appendix 2 to the Rules (as set out in Schedule 3 of this Agreement) in its entirety but:~~

~~(a) with the "Marginal rate on fees" discounted to:~~

- ~~(i) 30% of that stated for the fee band in respect of Gross Fees of £0 to £500,000; plus~~
- ~~(ii) 15% of that stated for the fee bands in respect of Gross Fees of £500,001 to £3,000,000; plus~~
- ~~(iii) 10% of that stated for the fee bands in respect of Gross Fees exceeding £3,000,001;~~

~~(b) subject to a minimum amount of premium for each such Firm of:~~

- ~~(i) £13,200 in respect of any calculation under paragraph 1.2 of Appendix 2 to the Rules;~~
- ~~(ii) £14,400 in respect of any calculation under paragraph 1.3 of Appendix 2 to the Rules;~~
- ~~(iii) £12,000 in respect of any calculation under paragraph 1.4 of Appendix 2 to the Rules; and~~

~~(c) subject to the application of the Premium Cap to the amount of any premium so calculated which would otherwise exceed any applicable Premium Cap limit;~~

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

~~(a) any Un-Aggregated Excess:~~

~~(i) is an amount exceeding £15,000 and that amount exceeds 1% of Gross Fees; or~~

~~(ii) is an amount exceeding £500,000; or~~

~~(b) any Aggregate Excess:~~

~~(i) is an amount exceeding £60,000 and that amount exceeds 5% of Gross Fees; or~~

~~(ii) is an amount exceeding £3,000,000,~~

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

~~**Gross Fees** shall have the meaning given in paragraph 1.8 of Appendix 2 to the Rules (as set out in Schedule 3 of this Agreement);~~

~~**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;~~

~~**Premium Cap** means, the amount specified in the second column of the table below (entitled "Limit") for the applicable insurance layer set out beside it in the first column of that table (entitled "Insurance Layer"):~~

<del>Insurance layer</del>	<del>Limit £</del>
<del>£1m Primary</del>	<del>500,000</del>
<del>£2m Primary</del>	<del>550,000</del>
<del>£3m Primary</del>	<del>600,000</del>
<del>£1m in excess of £1m</del>	<del>50,000</del>
<del>£1m in excess of £2m</del>	<del>50,000</del>
<del>£2m in excess of £1m</del>	<del>100,000</del>

~~**Premium Payable** means the amount of the premium (including any risk premium in respect of the ARP and all levies and charges relating to a Policy) due from a Firm to a Qualifying Insurer (excluding any amount in respect of Insurance Premium Tax), whether or not actually received by that Qualifying Insurer in respect of:~~

~~(a) each Policy (excluding ARP Policies) incepting in the period 1 October 2012 to 31 January 2013 to the extent that such premium relates to cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy; and~~

~~(a) each multi-year Policy (excluding ARP Policies) incepting in the period 1 February 2012 to 30 September 2012 to the extent that such premium relates to cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy;~~

~~as calculated in accordance with generally recognised professional indemnity underwriting methodologies, less any amount due to any intermediary acting as agent of the Firm for the purpose of obtaining the professional indemnity insurance but only to the extent that such amount relates to the placing of cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy 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 Qualifying 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;~~

~~**Relevant Premium Income** means, in respect of a Qualifying Insurer, the aggregate Declaration Premium Payable to it in respect of:~~

~~(a) each Policy (excluding ARP Policies) incepting in the period 1 October 2012 to 31 January 2013 to the extent that such premium relates to cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy; and~~

~~(a) each multi-year Policy (excluding ARP Policies) incepting in the period 1 February 2012 to 30 September 2012 to the extent that such premium relates to cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy;~~

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

~~**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.~~

~~For the purposes of the definitions of Un-Aggregated Excess and Aggregate Excess, where a Policy that a Firm is required to maintain under the Rules is provided by more than one Qualifying Insurer on a co-insurance basis, the amount of the excess or deductible shall be the total excess applicable to the co-insurance arrangement and not the Insurer's proportion of it.~~

## ~~4—Participation and application of the Master Policy Payment~~

~~1.1 The Insurer shall enter into the ARP Master Policy and shall thereby participate in the ARP throughout the Indemnity Period commencing on 1 October 2012 in accordance with the terms of this Agreement and the ARP Master Policy, for so long as it remains a Qualifying Insurer.~~

~~1.2 Subject to paragraph 1.3 below, the ARP Manager shall apply the ARP Master Policy Payment in payment towards the ARP Liability in respect of the Indemnity Period commencing on 1 October 2012 on the following basis:~~

~~1.2.1 up to £10 million to be applied as required in respect of the first £10 million of the ARP Liability in excess of any premiums received by the ARP Manager and applied pursuant to paragraph 1.3;~~

~~1.2.1£10 million to be applied if and to the extent that the ARP Liability exceeds £20,000,000; and~~

~~1.2.1£10 million to be applied if and to the extent that the ARP Liability exceeds £40,000,000.~~

~~1.3 The ARP Master Policy Payment shall only be applied pursuant to paragraph 1.2 following the application of any premiums received by the ARP Manager in respect of ARP Policies incepting in the Indemnity Period commencing on 1 October 2012 in respect of such Indemnity Period and only to the extent that such premiums are inadequate to meet the ARP Liability.~~

~~1.4 The ARP Manager shall be entitled to call upon, and the Law Society shall make available to the ARP Manager, such amount of the ARP Master Policy Payment as it may require from time to time for the purposes of paragraph 1.2.~~

## ~~2—ARP Manager~~

- ~~2.1 The ARP shall be managed and administered by the ARP Manager. The Law Society may carry out such of the functions of the ARP Manager as it is permitted to by law, and may appoint one or more third parties to carry out some or all of the functions of the ARP Manager as set out in this Agreement or in the Rules on its behalf. Any third party so appointed may directly enforce any rights granted by or under this Agreement to the ARP Manager in accordance with the Contracts (Rights of Third Parties) Act 1999 for the purpose of giving full effect to such appointment. The consent of any such third party shall not be required in respect of any variation or termination of this Agreement.~~
- ~~2.2 The Insurer agrees that the ARP Manager may issue an ARP Policy incepting during the relevant Indemnity Period to a Firm where:~~
- ~~2.2.1 the Firm has applied to be insured through the ARP; or~~
  - ~~2.2.2 the Firm is a Firm in Default; and~~
  - ~~2.2.3 (in either case) the Firm is eligible or is to be regarded under the Rules as being eligible to be so insured; or~~
  - ~~2.2.4 the Law Society has granted a waiver in accordance with the Rules from the requirement to meet some or all of those criteria.~~
- ~~2.3 The Insurer irrevocably appoints the ARP Manager as its agent to:~~
- ~~2.3.1 collect from the Law Society and apply the Master Policy Payment in accordance with paragraph 1;~~
  - ~~2.3.2 set the premium payable by each ARP Firm in accordance with the Rules;~~
  - ~~2.3.3 bind the Insurer to the terms of the ARP Policies issued to each ARP Firm in accordance with its Percentage Participation;~~
  - ~~2.3.4 calculate and adjust (in accordance with paragraphs 3.9 and 9.4) the Insurer's Initial Participation, Percentage Participation and Percentage Liability;~~
  - ~~2.3.5 issue ARP Policies and related documentation to ARP Firms on behalf of all Qualifying Insurers participating in the ARP, including the Insurer;~~
  - ~~2.3.6 if agreed in writing by the Insurer and subject to the terms of any agreement made with HM Revenue and Customs for this purpose, collect and account to HM Revenue and Customs for Insurance Premium Tax;~~
  - ~~2.3.7 receive notice of, negotiate, settle and pay claims on behalf of all Qualifying Insurers participating in the ARP, including the Insurer;~~
  - ~~2.3.8 recover unpaid premiums and other sums owed by ARP Firms;~~
  - ~~2.3.9 recover sums owed by Qualifying Insurers;~~
  - ~~2.3.10 provide data to the Law Society relating to ARP Policies and ARP Firms; and~~
  - ~~2.3.11 do all things incidental to any of the above and generally to do all such other things as may be necessary or expedient from time to time to facilitate the operation of the ARP.~~
- ~~2.4 The Insurer further irrevocably appoints the ARP Manager as its agent to:~~

~~2.4.1 conduct any claim, advance defence costs and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant Qualifying Insurer (including where applicable the Insurer in its own right or by virtue of its participation in the ARP), in accordance with clause 12.1.2; and~~

~~2.4.2 to commence, be a party to and be bound by the decision of an arbitration in accordance with clauses 12 and 13.~~

~~2.5 Where a Firm in Default makes an application to the ARP Manager to enter the ARP, the ARP Manager shall:~~

~~2.5.1 establish whether that Firm in Default is eligible or regarded under the Rules as being eligible to be insured through the ARP under the Rules or by virtue of any waiver of any provision of the Rules by the Law Society and, if so, issue one or more ARP Policies to that Firm in Default in accordance with the Rules or such waiver (as the case may be); and~~

~~2.5.2 (except where any such waiver has been granted) notify the Law Society, within 1 business day after the issuing of such ARP Policy/ies, of the identity of the Firm in Default, the fact that it has been or appears to have been carrying on business as a Firm in Default, and whether it has issued the Firm in Default with one or more ARP Policies.~~

~~2.6 Any ARP Policy issued in accordance with paragraph 2.5.1 shall be treated as incepting on the first day of the Indemnity Period to which it relates or, if later, the first day on which the Firm became a Firm in Default under the Rules, provided that an ARP Run-off Policy shall be treated as incepting on the date on which the Firm became a Run-off Firm.~~

### ~~3 Basis of participation in the ARP~~

~~3.1 The Insurer shall provide to the ARP Manager within 10 business days following the start of each Indemnity Period a declaration in the form set out in Part 1 of Schedule 4, providing a figure for the Relevant Premium Income of the Insurer on a best estimate basis.~~

~~3.2 In the event that the Insurer fails to provide a figure within the time limit in accordance with paragraph 3.1, the ARP Manager may in its absolute discretion make its own estimate of the relevant figure for the purposes of this paragraph 3.~~

~~3.3 The ARP Manager shall calculate in accordance with paragraph 3.7 the Initial Participation of the Insurer on the basis of the information provided in accordance with paragraph 3.1 or estimated in accordance with paragraph 3.2 and shall notify each Qualifying Insurer of its Initial Participation by no later than 20 business days after the start of the relevant Indemnity Period.~~

~~3.4 The Insurer shall provide a declaration of its Relevant Premium Income to the ARP Manager by no later than 28 February in each Indemnity Period in the form set out in Part 2 of Schedule 4, for the purpose of determining its Percentage Participation in the ARP for that Indemnity Period.~~

~~3.5 The ARP Manager shall calculate in accordance with paragraph 3.7 the Percentage Participation of the Insurer on the basis of the information provided in accordance with paragraph 3.4 and shall notify:~~

~~3.5.1 each Qualifying Insurer of its Percentage Participation; and~~

~~3.5.2 each ARP Firm of the Percentage Participations of each of the Qualifying Insurers to the extent that they exceed 0 per cent~~

~~by no later than 10 business days following the date in the relevant Indemnity Period on which the ARP Manager receives the last of the declarations required under paragraph 3.4 (the **Notification Date**) from any Qualifying Insurer.~~

~~3.6 The Percentage Participation notified on the Notification Date shall be applicable in respect of all ARP Policies incepting in the relevant Indemnity Period except to the extent that it may be adjusted from time to time in accordance with paragraph 9.~~

~~3.7 Each calculation made under this paragraph 3 shall be made in accordance with the formula:~~

~~X-100, where~~

~~— A = the Relevant Premium Income as declared by the Insurer in accordance with paragraph 3.1 or 3.4 or as estimated by the ARP Manager in accordance with paragraph 3.2 (as the case may require);~~

~~— B = the total Relevant Premium Income declared by all Qualifying Insurers for that Indemnity Period;~~

~~Provided that the ARP Manager may, at its absolute discretion, round the percentage resulting from the above formula, up or down to not less than three decimal points.~~

~~3.8 Without prejudice to paragraph 9.4 the Insurer warrants and represents to the ARP Manager for itself (and as trustee for all Qualifying Insurers participating in the ARP in any relevant Indemnity Period) that:~~

~~3.8.1 the estimated Relevant Premium Income declared pursuant to paragraph 3.1 is its best estimate of its Relevant Premium Income; and~~

~~3.8.2 to the best of the knowledge information and belief of the Insurer the Relevant Premium Income declared pursuant to paragraph 3.4 does not materially understate the Relevant Premium Income as at the date of such declaration; and~~

~~3.8.3 it has taken all reasonable steps to verify the accuracy of the declarations of its Relevant Premium Income made pursuant to paragraphs 3.1 and 3.4 and that such declarations have been made in good faith.~~

~~3.9 In the event that the ARP Manager can establish that the Insurer is in breach of the provisions of paragraph 3.8 and that in consequence the Percentage Liability of the Insurer has been materially understated (that is to say understated by more than 0.1 per cent) then the Percentage Liability of the Insurer (but not the Percentage Participation) shall be adjusted to the level it would have been, but for any such breach, and the Percentage Liability of all other Qualifying Insurers shall be adjusted accordingly.~~

#### **4 Quarterly reporting**

~~4.1 The ARP Manager shall at intervals of not less than 3 months following the Notification Date in respect of each Indemnity Period provide a bordereau to each insurer participating in the ARP in that Indemnity Period setting out premiums received and claims made or notified in respect of that Indemnity Period, and the administration and management costs and expenses incurred by the ARP Manager relating to that Indemnity Period.~~

~~4.2 The obligation of the ARP Manager under paragraph 4.1 shall continue until 3 months after the end of the Indemnity Period in question or, if later, for so long as any claims made on ARP Policies incepting in that Indemnity Period remain outstanding.~~

#### **5 Share of premium**

~~5.1 To the extent that all or any premiums received by the ARP Manager in respect of ARP Policies incepting in the relevant Indemnity Period are not required to be applied to the ARP Liability under paragraph 1.3, the Insurer shall be entitled to share in such premiums in accordance with its Percentage Participation from time to time, subject to:~~

- ~~5.1.1 deduction of administration and management charges (including any applicable Value Added Tax) by the ARP Manager;~~
- ~~5.1.2 (where the Insurer has agreed that these may be paid on its behalf by the ARP Manager under paragraph 2.3.6 or where the obligation to pay such amounts falls on the ARP Manager as a matter of law) deduction of any amounts payable by the ARP Manager to HM Revenue and Customs by way of Insurance Premium Tax;~~
- ~~5.1.3 any set-off against the liability of the Insurer from time to time under paragraph 6;~~
- ~~5.1.4 any set-off against the liability of the Insurer from time to time in respect of claims arising on ARP Policies;~~
- ~~5.1.5 any adjustment required under paragraph 6.5;~~
- ~~5.1.6 any adjustment to the Insurer's Percentage Liability in accordance with paragraph 3.9;~~
- ~~5.1.7 any adjustment to the Insurer's Initial Participation Percentage Participation or Percentage Liability in accordance with paragraph 9;~~
- ~~5.1.8 the addition of any income earned (net of any taxation in respect of that income) on premiums received by the ARP Manager; and~~
- ~~5.1.9 deduction of any sum due pursuant to paragraph 8.1,~~

~~such share after taking into account each of the above adjustments being referred to in this Agreement as the **ARP Amount**.~~

- ~~5.2 If, on the date 3 months following the end of the relevant Indemnity Period, the ARP Amount in respect of any Indemnity Period is greater than zero, the ARP Manager shall pay such sum to the Insurer within 20 business days thereafter, but without prejudice to its rights under to make any subsequent demands under paragraph 6.~~
- ~~5.3 The ARP Manager shall keep all premiums received in respect of ARP Policies in a separate account in relation to each Indemnity Period and held by the ARP Manager, subject to paragraph 1.3, on trust for the Qualifying Insurers which participate in the ARP at any time during the relevant Indemnity Period.~~
- ~~5.4 The ARP Manager shall execute a Deed of Trust in the form attached to this Schedule 1, setting out the terms on which it shall hold sums as agent and trustee of each Qualifying Insurer.~~

## **6 Share of liability**

- ~~6.1 The Insurer shall be liable to make payments under each ARP Policy incepting in the relevant Indemnity Period in accordance with its Percentage Liability.~~
- ~~6.2 The Percentage Liability of the Insurer in respect of each ARP Policy shall (subject to paragraphs 3.9 or 9.4) equal its Percentage Participation applicable on the date on which that ARP Policy or any such arrangements incepted.~~
- ~~6.3 The ARP Manager may at any time and from time to time demand from the Insurer an amount as specified by the ARP Manager for the purpose of making payments on behalf of the Insurer in accordance with its Percentage Liability.~~
- ~~6.4 The ARP Manager may at any time and from time to time demand from the Insurer an amount as specified by the ARP Manager for the purpose of meeting the administration and management costs and expenses (including any applicable Value Added Tax) of the ARP Manager, including without limitation in respect of all costs and expenses howsoever incurred (including where applicable, but without limitation, the amount of any claim paid and associated claimant's costs~~

~~and any applicable Value Added Tax in such costs and expenses) in respect of any claim handled by the ARP Manager in accordance with clause 12.1.2, provided that in each case any such demand is made at the same time from all Qualifying Insurers participating in the ARP at the date of the demand in accordance with the Percentage Liability of each such Insurer on the date of the demand.~~

~~6.5 If any demand under this paragraph 6 is made before the Notification Date in any Indemnity Period before the relevant Percentage Participation (or, as the case may be, the relevant Percentage Liability) of the Insurer has been determined, then any such demand may be made in accordance with the Initial Participation of the Insurer, provided that the ARP Manager shall make any adjustment necessary to the ARP Amount in respect of the Insurer to reflect any difference between the Insurer's Initial Participation and the Insurer's relevant Percentage Participation (or, as the case may be, the relevant Percentage Liability) within one month of the Notification Date.~~

~~6.6 The ARP Manager shall not make any demand from the Insurer under this paragraph 6 where:~~

~~6.6.1 the Insurer has paid the ARP Manager in full following all previous such demands; and~~

~~6.6.2 the ARP Manager holds sufficient premiums on trust for the Insurer from which to pay known and anticipated claims and defence costs and/or meet any administration and management costs and expenses (including any applicable Value Added Tax).~~

~~6.7 The Insurer shall pay to the ARP Manager all sums demanded by the ARP Manager under this paragraph 6 within 10 business days of such demand being made by the ARP Manager. If the Insurer fails to make payment to the ARP Manager in full within such period, the ARP Manager shall be further entitled to recover from the Insurer a sum equal to all reasonable additional costs and expenses incurred by it in pursuing such payment. Interest shall accrue at a rate equal to the base rate from time to time of Barclays Bank plc plus three per cent to any sums that remain unpaid within 10 business days of such demand being made by the ARP Manager, and any sums representing reasonable additional costs and expenses.~~

~~6.8 The ARP Manager shall, on request in writing from the Insurer, provide evidence of its administration and management costs and expenses where any sum in respect of such costs and expenses has been demanded under paragraph 6.4.~~

## ~~7 ARP Indemnity Period~~

~~7.1 Each ARP Policy (except an ARP Policy under which the period of run-off cover pursuant to clauses 5.1 and 5.2 commences on or before 1 October 2013 or an ARP Run-off Policy which incepted on or before 30 September 2013) issued by the ARP Manager on behalf of the Qualifying Insurers shall expire on, and the ARP Manager may not issue any such ARP Policy with an expiry date that is later than, the earlier to occur of:~~

~~7.1.1 30 September 2013; and~~

~~7.1.2 the date which is six months after the inception date of that ARP Policy.~~

~~7.2 No ARP Policy (except an ARP Policy under which the period of run-off cover, pursuant to clauses 5.1 and 5.2 of the ARP Policy, commences on or before 1 October 2013 or an ARP Run-off Policy which incepted on or before 30 September 2013) shall in any circumstances continue to remain in force after 30 September 2013.~~

~~7.3 Each ARP Run-off Policy shall expire on the day immediately prior to the sixth anniversary of:~~

~~7.3.1 the start of the Indemnity Period in which cover incepted; or~~



~~7.3.2 if applicable, the start of the last Indemnity Period, prior to the relevant Firm becoming a Run-Off Firm, in which it both ceased to be an Eligible Firm and was a Firm in Default and confirmed as such until the date on which it became a Run-Off Firm,~~

~~whichever is the earlier.~~

~~7.4 Paragraphs 7.1 and 7.2 shall apply in respect of an ARP Policy subject to the eligibility under the Rules of the ARP Firm in question to remain in the ARP until the end of the Indemnity Period, and an ARP Policy shall expire upon the ARP Firm holding such Policy ceasing to be entitled under the Rules to be insured through the ARP.~~

## ~~8 Additional charges~~

~~8.1 The ARP Manager shall pay on behalf of Qualifying Insurers the costs and expenses of the Law Society in respect of any special measures as notified to it by the Law Society imposed on an ARP Firm. The ARP Manager shall be entitled to seek reimbursement of any such costs and expenses from the relevant ARP Firm.~~

## ~~9 Adjustments to Percentage Participation and Percentage Liability~~

~~9.1 If any Qualifying Insurer becomes a Run-off Insurer during any Indemnity Period (but not thereafter) then:~~

~~9.1.1 the Percentage Participation of each of the other Qualifying Insurers in respect of the unexpired part of the relevant Indemnity Period shall be recalculated in accordance with the formula set out in paragraph 3.7 but excluding the Relevant Premium Income of the Run-off Insurer in question; and~~

~~9.1.2 the Percentage Participation of the Run-off Insurer in question in respect of the unexpired part of the relevant Indemnity Period shall equal zero.~~

~~9.2 The Percentage Participation adjusted under paragraph 9.1 shall apply from the date on which the Run-off Insurer in question became a Run-off Insurer.~~

~~9.3 If at any time after the start of any Indemnity Period any Qualifying Insurer or Run-off Insurer which is or was a participant in the ARP during that Indemnity Period is the subject of an Insolvency Event, the Percentage Liability of the Qualifying Insurer or Run-off Insurer in question and each other Qualifying Insurer shall remain the same as it was immediately prior to the Insolvency Event.~~

~~9.4 Without prejudice to paragraph 3.9 the ARP Manager may, in its absolute discretion, at any time during or after the end of any Indemnity Period adjust the Initial Participation, the Percentage Participation and/or the Percentage Liability of each Qualifying Insurer prospectively or retrospectively in the light of information relating to the Relevant Premium Income of one or more Qualifying Insurers obtained or received by the ARP Manager which indicates that:~~

~~9.4.1 the Relevant Premium Income of any such Qualifying Insurer is greater than that previously declared to the ARP Manager pursuant to paragraphs 3.1 and 3.4 of this Schedule; or~~

~~9.4.2 the declaration of Relevant Premium Income made by any such Qualifying Insurer pursuant to paragraphs 3.1 and 3.4 of this Schedule understates the premium (including any risk premium in respect of the ARP and all levies and charges relating to a Policy) due from Firms to the Qualifying Insurer (excluding any amount in respect of Insurance Premium Tax), whether or not actually received by that Qualifying Insurer, in respect of each Policy incepting in the period 1 February 2012 to 31 January 2013 to the extent that such premium relates to cover required in accordance with the Minimum Terms for the Policy Period applicable to the Policy.~~

~~9.5 The ARP Manager shall notify in writing:~~

~~9.5.1 each Qualifying Insurer of its revised Percentage Participation; and~~

~~9.5.2 each ARP Firm of the revised Percentage Participations of each of the Qualifying Insurers,~~

~~by no later than 10 business days following any adjustment being made in accordance with any of the provisions of this paragraph 9.~~

## **10—Supplementary provisions**

~~10.1 Clauses 6, 7, 9, 10, 12, 13, 14, 15 and 16 shall apply to the ARP Manager in respect of its dealings with ARP Firms, Qualifying Insurers and the Law Society in the same way as they apply to Qualifying Insurers, except that the ARP Manager shall be obliged to notify the Law Society in the circumstances described in clause 6.2.~~

~~10.2 The Insurer undertakes and agrees with the ARP Manager and the Law Society that it shall:~~

~~10.2.1 if called upon to do so, ratify and confirm any lawful and reasonable act or omission of the ARP Manager, its employees and agents on behalf of the Insurer and/or all Qualifying Insurers in carrying out the duties of the ARP Manager under this Agreement; and~~

~~10.2.2 indemnify the ARP Manager and keep it indemnified fully at all times against all liabilities, claims, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by the ARP Manager in the proper performance by the ARP Manager of its duties under this Agreement.~~

~~10.3 The ARP Manager (and its agents and advisors from time to time) shall be entitled to access any records of the Insurer at all times on reasonable notice during normal business hours for the purpose of verifying or obtaining any information provided or required to be provided by the Insurer to the ARP Manager.~~

Private & Confidential

**Dated**

~~\_\_\_\_\_~~ **Capita Commercial Insurance Services Limited** ~~\_\_\_\_\_~~ (1)  
~~\_\_\_\_\_~~ **in its capacity as Assigned Risks Pool Manager**  
~~\_\_\_\_\_~~ **and**  
~~\_\_\_\_\_~~ **The Law Society of England and Wales** ~~\_\_\_\_\_~~ (2)

**Trust Deed**

**Indemnity Period 2012 to 2013**

~~THIS DECLARATION OF TRUST is made on \_\_\_\_\_ 2012 between:~~

- ~~(1) **CAPITA COMMERCIAL INSURANCE SERVICES LIMITED** (a company registered in England and Wales under number 02845397), whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent, BR3 4TV (the **Trustee**); and~~
- ~~(2) **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 **Society**).~~

**WHEREAS**

- ~~(A) The Council of the Society has, in exercise of its powers under the Solicitors Act 1974, made rules concerning indemnity against civil liability incurred by, amongst others, solicitors in private practice in England and Wales.~~
- ~~(B) These rules require firms and sole practitioners in private practice to take out professional indemnity insurance on at least the minimum terms and conditions with an authorised insurer which has entered into a Qualifying Insurer's Agreement with the Society.~~

- ~~(C) The Rules and the Qualifying Insurer's Agreement provide for an assigned risks pool to be managed by an assigned risks pool manager.~~
- ~~(D) The Society has appointed the Trustee to perform the obligations of assigned risks pool manager as agent for each Qualifying Insurer and in accordance with the requirements of the Rules and the Qualifying Insurer's Agreement.~~
- ~~(E) The purpose of this Deed is to set out the terms on which the Trustee, as Assigned Risks Pool Manager, will hold monies as agent and trustee of the Beneficiaries.~~

## ~~1 Definitions and interpretation~~

~~1.1 In this Deed, unless the context requires otherwise:~~

~~**ARP Monies** means all sums held by the Trustee in accordance with the Assigned Risks Pool Management Agreement and the Qualifying Insurer's Agreement in relation to the establishment and operation of the Assigned Risks Pool, including interest accrued on such sums~~

~~**Assigned Risks Pool** means the arrangements described in Schedule 1 to the Qualifying Insurer's Agreement and in the Rules, in relation to the Indemnity Period~~

~~**Assigned Risks Pool Management Agreement** means the agreement entered into between the Trustee (as assigned risks pool manager) and the Society relating to the establishment and operation of the Assigned Risks Pool, as amended from time to time~~

~~**Beneficiaries** means those Qualifying Insurers participating in the Assigned Risks Pool for all or part of the Indemnity Period, as shown for ease of identification in Annex 1~~

~~**Indemnity Period** means the period from 1 October 2012 to 30 September 2013~~

~~**Qualifying Insurer's Agreement** means the agreement entered into by each of the Beneficiaries and (in each case) the Trustee and the Society in relation to the Indemnity Period~~

~~**Percentage Participations** has the meaning given in the Qualifying Insurer's Agreement, and in relation to each Beneficiary means that amount, expressed as a percentage, set out for ease of identification alongside the name of each Beneficiary in Annex 1, or as they may be varied from time to time in accordance with the Qualifying Insurer's Agreement~~

~~**Rules** means the Solicitors' Indemnity Insurance Rules or SRA Indemnity Insurance Rules in respect of the Indemnity Period~~

~~1.2 In this Deed, unless the context requires otherwise:~~

~~1.2.1 references to a clause or annex are to a clause of, or an annex to, this Deed, and references to this Deed include its annex(es);~~

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

~~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 and schedules are inserted for reference only and shall be ignored in interpreting this Deed;~~

~~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 Deed, or after the date of this Deed.~~

## **2—Declaration of trust**

- ~~2.1 The Trustee declares that it holds the ARP Monies upon trust for the Beneficiaries and their respective successors in title in proportion to their Percentage Participations.~~
- ~~2.2 The Trustee shall pay and deal with the ARP Monies in accordance with the terms of the ARP Management Agreement, the Qualifying Insurer's Agreement and the provisions of this Deed, including, without limitation, paying and receiving such sums on behalf of each Beneficiary as are contemplated in Schedule 1 to the Qualifying Insurer's Agreement and, subject thereto, as each Beneficiary from time to time directs.~~
- ~~2.3 The Trustee may, with the prior consent in writing of the Society, terminate the trust established by this Deed at any time upon reasonable notice to each Beneficiary, but without prejudice to the rights and obligations of the Trustee and each of the Beneficiaries arising prior to the date of termination. As between the Trustee and the relevant Beneficiary, the trust established by this Deed shall terminate upon the Trustee paying such sum (if any) as it may at that time hold on behalf of any Beneficiary in full and final settlement of that Beneficiary's obligations under the Qualifying Insurer's Agreement in respect of the Assigned Risks Pool.~~
- ~~2.4 The obligations of the Trustee set out in this Deed are additional to and not in substitution for its obligations under the Assigned Risks Pool Management Agreement and the Qualifying Insurer's Agreement, and references in the Qualifying Insurer's Agreement to the duties of the Assigned Risks Pool Manager shall be read as including the duties of the Trustee under this Deed.~~
- ~~2.5 The Trustee shall complete the details of each Beneficiary in Annex 1 upon that information becoming available to it in accordance with the Qualifying Insurer's Agreement, but any omission or inaccuracy in Annex 1 shall in no way prejudice the rights of any Qualifying Insurer or alter the obligations of the Trustee in relation to that Qualifying Insurer, and the Trustee shall not be obliged to update the details in Annex 1 if they change for whatever reason.~~

## **3—Holding of ARP Monies**

- ~~3.1 The Trustee shall hold the ARP Monies in a separate designated bank account, in the name of "Capita Commercial Insurance Services Limited as trustee for underwriters subscribing to the Assigned Risks Pool for the 2012/2013 Indemnity Period", held with National Westminster Bank, PO Box 12258, 1 Princes Street, London EC2R 8PA, Sort Code 60-00-01, or at such other UK branch of any bank authorised to carry on business in the UK as the Trustee may determine from time to time.~~
- ~~3.2 The ARP Monies shall not be mixed or commingled with any other monies, including without limitation monies relating to the assigned risks pool for any other indemnity period.~~
- ~~3.3 The Trustee shall notify the Beneficiaries in writing of the details of the account referred to in clause 3.1 and of any material change to the account in which the ARP Monies are held.~~
- ~~3.4 The Trustee shall comply with all regulatory requirements in respect of the holding of the ARP Monies, including without limitation all regulatory requirements imposed by the Financial Services Authority.~~

**4—Appointment of new trustees**

- 4.1 ~~The Trustee may, with the prior consent in writing of the Society and on reasonable notice to the Beneficiaries, appoint another person or persons to act as trustee jointly in addition to or in substitution for the Trustee in accordance with the terms of this Deed.~~
- 4.2 ~~The Society may, on reasonable notice to Trustee, terminate the appointment of the Trustee as trustee under this Deed, including without limitation if it terminates the appointment of the Trustee as manager of the Assigned Risks Pool, and may appoint another person or persons to act as trustee in addition to or in substitution for the Trustee in accordance with the terms of this Deed. The Society shall procure that any replacement trustee promptly gives notice of its appointment as such to the Beneficiaries.~~
- 4.3 ~~On the happening of any of the events contemplated in clauses 4.1 and 4.2, the Trustee or (as the case may be) the Society may transfer all or part of the ARP Monies to another person or persons to act as trustee, provided that each such other person has agreed to hold such monies on terms substantially the same as those set out in this Deed and in particular on trust for the Beneficiaries.~~

**5—Other provisions**

- 5.1 ~~This Deed (together with any documents referred to in it) sets out the entire agreement and understanding in connection with the matters described in it.~~
- 5.2 ~~Any Beneficiary may enforce the terms of this Deed as if it were a party hereto, in accordance with the Contracts (Rights of Third Parties) Act 1999, but no third party shall otherwise have any rights under or in connection with this Deed by virtue of that Act or otherwise.~~
- 5.3 ~~This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.~~

~~IN WITNESS of which this document has been executed as a Deed and delivered on the date first above written.~~

~~EXECUTED as a DEED and delivered )  
by THE TRUSTEE ) .....  
Director~~

~~.....  
Director / Secretary~~

~~EXECUTED as a DEED and delivered )  
by THE LAW SOCIETY ) .....  
.....~~

### List of Beneficiaries

*[List relevant Qualifying Insurers and their Percentage Participations for the Indemnity Period in question]*

Beneficiary	Percentage Participation

### Schedule 2 ARP Master Policy

<b>Type of Cover</b>	Solicitors' indemnity insurance provided to Firms in the Assigned Risks Pool, in accordance with: <ul style="list-style-type: none"> <li>• the SRA Indemnity Insurance Rules 2012 (<b>Rules</b>) as amended from time to time; and</li> <li>• the Qualifying Insurer's Agreement made between the Insurers herein, the Law Society of England and Wales (<b>the Law Society</b>) and Capita Commercial Insurance Services Limited (<b>the ARP Manager</b>) for the Indemnity Period commencing on 1 October 2012 (<b>the QIA</b>).</li> </ul>
<b>The Insurers</b>	Each Qualifying Insurer as defined in the QIA.
<b>Insurers' participation</b>	In accordance with each Insurer's Percentage Participation as specified by the ARP Manager from time to time in accordance with Schedule 1 to the QIA.
<b>Policyholder</b>	The Law Society.
<b>The Assured</b>	All ARP Firms (as defined under the QIA).
<b>The terms and conditions of cover</b>	In accordance with the terms of the ARP Policy or ARP Run-Off Policy (as the case may be) as specified in Appendix 1 to this Schedule, the Rules and the QIA.
<b>Premium</b>	Such amounts as are due from each Assured in accordance with the

	terms of the ARP Policy, the Rules and the QIA and as applied in the first instance to the ARP Liability in accordance with paragraph 1.3 of Schedule 1 to the QIA.
<b>Period of Insurance</b>	1 October 2012 to 30 September 2013 (both days inclusive), or such longer period as may apply under any ARP Run-off Policy.
<b>Interpretation</b>	This ARP Master Policy shall be interpreted in accordance with, and given such effect as required by, the QIA and the Rules.
<b>ARP Master Policy Payment</b>	The Policyholder shall pay, on a demand of the ARP Manager made in accordance with paragraph 1.4 of Schedule 1 to the QIA, an amount not exceeding £30,000,000 (inclusive of all applicable taxes or duties) to meet such proportion of the ARP Liability as may be required in accordance with the terms of paragraph 1.2 of Schedule 1 to the QIA.
<b>Charges</b>	All amounts paid or payable pursuant to paragraphs 6.4 and 8.1 of Schedule 1 to the QIA.
<b>Sum Insured under ARP Policies</b>	In accordance with the terms of the ARP Policy or ARP Run-Off Policy (as the case may be) as specified in Appendix 1 to this Schedule, the Rules and the QIA.
<b>Sum Insured under ARP Master Policy</b>	Unlimited.



## Appendix 1

### ARP Policy

~~This contract is provided as evidence of cover under the master policy entered into between the Law Society and, inter alia, the insurer.~~

#### Part 1

### Contract of ARP insurance

#### 1—Insuring clauses

##### 1.1—Civil liability

~~The insurer will 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 insurer will 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 cover under clause 1.1, the insured includes:~~

- ~~(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 *insurer* will 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 cover under clause 1.4, the *insured* includes:

- (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 *insurer* will 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*.~~

#### 1.7—The insured—successor practice

For the purposes of cover under clause 1.6, the *insured* includes:

- (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 insurer will indemnify each insured against any amount paid or payable in accordance with the recommendation or determination 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) is as set out in the schedule.~~

### **2.2—No limit on defence costs**

~~The sum insured does not apply to defence costs.~~

### **2.3—Proportionate limit on defence costs**

~~Notwithstanding clause 2.2, 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—One claim**

~~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*.~~

## ~~2.5 — Multiple underwriters~~

~~Where the insurance is underwritten jointly with any other insurer:~~

~~(a) — the *insurer* shall be severally liable only for its respective proportion of liability as set out in the *schedule*; and~~

~~(b) — in addition to the proportionate limit on *defence costs* in accordance with clause 2.3, the *insurer's* liability for *defence costs* shall be further limited to the extent or proportion of the *insurer's* liability (if any) in relation to the relevant *claim*.~~

~~Where the insurance is written jointly with any other insurer on an excess of loss basis, and the *insurer* is writing one of the excess layers, the provisions of Part 3 shall apply.~~

## ~~3 — Excesses~~

### ~~3.1 — The excess~~

~~The *insured* will bear the first amount of each and every *claim* up to the amount of the *excess* specified in the *schedule*.~~

### ~~3.2 — Excess does not reduce sum insured~~

~~The *excess* does not reduce the *sum insured*.~~

### ~~3.3 — Excess does not apply to defence costs~~

~~The *excess* does not apply to *defence costs*.~~

### ~~3.4 — Funding of the excess~~

~~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. Any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.~~

### ~~3.5 — One claim~~

~~All *claims* against any one or more *insured* arising from the same act or omission or from one series of related acts or omissions will be regarded as one *claim* for the purposes of the *excess*.~~

## ~~4 — Special conditions~~

### ~~4.1 — No avoidance or repudiation~~

~~The *insurer* is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.~~

### ~~4.2 — No adjustment or denial~~

~~The *insurer* is not entitled to reduce or deny its liability under this contract on any grounds whatsoever including, without limitation, any breach of any term or condition of this contract, except to the extent that one of the exclusions contained in clause 6 applies.~~

#### 4.3—No cancellation

This contract 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 the *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 *MTC* commences, but only where, in the case of insurance not provided wholly or partly by the *ARP*, the replacement insurance is not provided wholly or partly by the *ARP*, 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 *SRA Indemnity Insurance Rules* to effect a policy of *qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *indemnity 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; or~~
- (d) ~~it subsequently transpires that the *insured firm* was not or has ceased to be an *eligible firm*, in which case cancellation shall have effect from the date on which it ceased to be an *eligible firm*.~~

~~Cancellation will not affect the rights and obligations of the *insurer* and the *insured* accrued under this contract prior to the date from which cancellation has effect.~~

#### 4.4—No set-off

~~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 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—Other insurance

~~The liability of the *insurer* under this contract is not reduced or excluded by reason of the existence or availability of any other insurance except as provided by clause 6.1. This clause does not affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.~~

#### 4.6—Successor practice—'double insurance'

~~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.~~

#### 4.7—Advancement of defence costs

~~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.~~

#### ~~4.8—Resolution of disputes~~

~~If there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.3, 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 the *MTC* and that party's insurer.~~

#### ~~4.9—Conduct of a claim pending dispute resolution~~

~~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 *insurer*; 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.~~

#### ~~4.10—Minimum terms and conditions prevail~~

~~This contract is to be construed or rectified so as to comply with the requirements of the *MTC*, and any provision of this contract which is inconsistent with the *MTC* is to be severed or rectified to comply except:~~

- ~~(a) that no *ARP Policy* shall provide cover in respect of an *extended indemnity period* or a *cessation period*; and~~
- ~~(b) to the extent that, at the date of this contract, the terms of the *MTC* and this Appendix 1 of Schedule 2 to the "*qualifying insurer's agreement*" (as such term is defined in the *Glossary*) in respect of the *indemnity period* commencing on 1 October 2012, are expressly different.~~

## ~~5—Run-off cover~~

### ~~5.1—Cessation of the insured firm's practice~~

~~In the event of a *cessation*, this contract provides run-off cover in accordance with clause 5.2. For these purposes, the *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*.~~

### ~~5.2—Scope of run-off cover~~

~~If run-off cover is provided under clause 5.1, the *insurer* will indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but subject to the limits, exclusions and conditions of this contract) 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).~~

### 5.3—~~Succession~~

~~Run-off cover is not provided under clause 5.1 if there is a *successor practice* to the ceased *practice*, provided that there is insurance complying with the *MTC* in relation to that *successor practice*.~~

### 5.4—~~Suspended practices~~

~~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 the *MTC* in relation to the *insured firm* in force on the date of cancellation;~~
- ~~(b) the *qualifying insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
  - ~~(i) it is providing insurance complying with the *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 liability of the *insurer* under this contract is not excluded or limited 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 this contract nonetheless covers 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 this contract nonetheless covers 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 *insurer* is not liable to indemnify any *insured* 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 *insured*, except that:~~

- ~~(a) this contract nonetheless covers each other *insured*; and~~
- ~~(b) no such 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 *insurer* is not liable 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 clause 1.3(b), 1.5(b) or 1.7(b)) except that:~~



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

#### ~~6.10 War and terrorism, and asbestos~~

- ~~(a) Subject to 6.10(b) below, but otherwise notwithstanding any provision to the contrary within this insurance or any endorsement hereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;~~
- ~~(i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or~~
- ~~(ii) any act of terrorism; or~~
- ~~(iii) 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.~~

~~For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any *person* or group(s) of *persons*, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.~~

~~This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i), (ii) and/or (iii) above.~~

~~If the *insurer* alleges that by reason of this clause, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the *insured*.~~

~~In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.~~

- ~~(b) Clause 6.10(a) above 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—Notice of claims and circumstances~~

~~The *insured* will give notice in writing to the *insurer* as soon as is reasonably practicable of any:~~

- ~~(a) *claim* first made against *insured* during the *period of insurance*; or~~
- ~~(b) *circumstances* of which any *insured* first became aware during the *period of insurance*.~~

## 7.2—Co-operation and assistance

~~Each *insured* will give the *insurer* and any investigators or solicitors appointed by the *insurer* all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible *claim* or any related proceeding.~~

## 7.3—Conduct of any proceeding

~~The *insurer* may at its option take over and conduct in the name of any *insured* any proceeding arising out of or relating to any *claim* in respect of which the *insurer* is liable to indemnify any *insured* under this contract.~~

## 7.4—No admission of liability

~~The *insured* will not, without the prior consent in writing of the *insurer*, admit liability for or settle any *claim* in respect of which the *insurer* is liable to indemnify any *insured* under this contract. If the *insured* firm wishes a *claim* to be settled, but the *insurer* does not, the *insurer* will brief senior counsel (to be mutually selected or, in default of agreement, to be selected by the *Society*) to advise on whether or not the *claim* against the *insured* is likely to succeed. If counsel's advice is that the *claim* is likely to succeed, the *insurer* shall take such steps as are mutually agreed to settle the *claim* on terms to be mutually agreed or, in default of agreement, such steps and such terms as counsel advises having due regard to the interests of both the *insured* and the *insurer*. Counsel's fee will in each case be payable by the party against whose contention counsel advised.~~

## 7.5—Subrogation

~~If any payment is made by the *insurer* in respect of a *claim* against any *insured*, the *insurer* will be subrogated to all rights of the *insured* of indemnity, contribution or recovery to the extent of that payment. The *insured* will not surrender any such right, or settle any such claim for indemnity, contribution or recovery, without the prior consent in writing of the *insurer*.~~

## 7.6—Reimbursement

~~Each *insured* who committed or condoned (whether knowingly or recklessly):~~

- ~~(i) non-disclosure or misrepresentation; or~~
- ~~(ii) any breach of the terms or conditions of this contract; or~~
- ~~(iii) dishonesty or any fraudulent act or omission;~~

~~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 this contract 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.~~

~~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*. Any right of reimbursement under this clause 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) dishonesty or any fraudulent act or omission.~~

**7.7—Reimbursement of defence costs**

~~Each *insured* will reimburse the *insurer* for defence costs advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.~~

**7.8—Reimbursement of the excess**

~~Those *persons* who are at any time during the *period of insurance* principals of the *insured firm* (including, for these purposes, every *person* held out as a *partner* of a *sole practitioner*) will reimburse the *insurer* for any excess paid by the *insurer* on an *insured's* behalf. The *sum insured* is reinstated to the extent of reimbursement of any amount which eroded it under clause 3.4.~~

**7.9—Reimbursement of moneys paid pending dispute resolution**

~~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.~~

**7.10—Withholding assets or entitlements**

~~The *insured firm* will 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*.~~

**7.11—Disclosure of information**

~~The *insurer* may bring to the attention of the *Society* any of the matters referred to in Rule 17.1(a) to (f) of the *SRA Indemnity Insurance Rules*, and, in the case of any of the matters referred to in Rule 17.1(f), to the Office for Legal Complaints (including the *Legal Ombudsman*), in relation to the *insured firm* or any *insured*, and is not required to notify the *insured firm* or any *insured* of the fact that it has done so or intends to do so.~~

**8—Definitions****8.1—General**

~~In this contract 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 headings are for ease of reference only and shall not affect the interpretation of the provisions of this contract;~~
- ~~(e) "in writing" includes any form of written electronic communication normally used for business purposes, such as emails;~~
- ~~(f) references to certificates, letters or other forms of written communication include references to those in both electronic and hard copy format;~~
- ~~(g) a reference to any statute, statutory provision, code or regulation includes:~~

- ~~(i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and~~
- ~~(ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at the date of or after the date of the commencement of any of the provisions of this contract;~~
- ~~(h) the provisions within this contract will be governed by and interpreted in accordance with English law;~~
- ~~(i) 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;~~
- ~~(j) the terms “company”, “director” and “member” shall have the meaning set out in the Glossary, save that a reference to a director includes a member of an LLP;~~
- ~~(k) words and expressions which appear in italics in this contract have the meaning set out in this clause 8; and~~
- ~~(l) words and expressions in this contract are to be construed consistently with the same or similar words or expressions in the Glossary.~~

## 8.2 ~~Defined terms~~

~~In this contract:~~

~~**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.~~

~~**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 an *eligible firm* may obtain professional indemnity insurance against civil liability by means of an *ARP policy* on the terms set out in Part 3 of the *SRA Indemnity Insurance Rules*.~~

~~**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*.~~

~~**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*.~~

~~**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, 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.~~

~~**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~~
- ~~(i) — in a one-tier system, a member of the administrative organ.~~

~~**eligible firm** shall have the meaning set out in the *Glossary*.~~

~~**employee** means any *person* other than a *principal*:~~

- ~~(a) — 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 (as defined in the *SRA Indemnity Insurance Rules*), office or clerical staff member or otherwise;~~
- ~~(b) — seconded to work in the *insured firm's practice*; or~~
- ~~(c) — 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.~~

~~**firm** means:~~

~~(i) any recognised body (as constituted from time to time); or~~

~~(ii) any solicitor or REL who is a sole practitioner, unless that sole practitioner is a non-SRA firm; or~~

~~(iii) 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~~

~~(iv) any licensed body in respect of its regulated activities;~~

~~whether before or during any relevant indemnity period.~~

~~**foreign lawyer** means an individual who is not a solicitor or barrister of England and Wales, but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales.~~

~~**Glossary** means the SRA Handbook Glossary 2012 as made by the Solicitors Regulation Authority Board.~~

~~**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.~~

~~**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 1.3and, in relation to prior practices and successor practices respectively, those referred to in clauses 1.5 and 1.7.~~

~~**insured firm** means the firm (as defined for the purposes of the SRA Indemnity Insurance Rules) which has entered into this contract.~~

~~**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 this contract as specified in the schedule, including, where applicable, such underwriter(s) acting through the manager for the time being of the Assigned Risks Pool.~~

~~**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.~~

~~**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.~~

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

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

~~**LSA** means the Legal Services Act 2007.~~

~~**member** means a member of a practice, being:~~

- ~~(i) — any principal (including any *principal*) therein;~~
- ~~(ii) — any *director* or officer thereof, in the case of a *recognised body* or a *licensed body* which is a *company*;~~
- ~~(iii) — any member thereof in the case of a *recognised body* or a *licensed body* which is an *LLP*;~~
- ~~(iv) — any *recognised body* or a *licensed body* which is a *partner* or held out to be a *partner* therein and any officer of such *recognised body* or a *licensed body* which is a *company*, or any member of such *recognised body* or a *licensed body* which is an *LLP*;~~
- ~~(v) — any *person* employed in connection therewith (including any *trainee solicitor*);~~
- ~~(vi) — any *solicitor* or *REL* who is a consultant to or associate in the practice;~~
- ~~(vii) — any *foreign lawyer* who is not an *REL* and who is a consultant or associate in the practice; and~~
- ~~(viii) — any *solicitor* or *foreign lawyer* who is working in the practice as an agent or locum tenens, whether he or she is so working under a contract of service or contract for services;~~

~~and includes the estate and/or personal representative(s) of any such *persons*.~~

~~**MTC** means the minimum terms and conditions required by the *SRA Indemnity Insurance Rules* for insurance commencing at inception of the *period of insurance*.~~

~~**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~~
- ~~(i) — not capable of being authorised to practise by any *approved regulator*.~~

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

~~**partnership** 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 this contract operates and expiring no later than midnight on 30 September 2013.~~

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

~~**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 *insured 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:~~

~~(A) is held out as a *director*; or~~

~~(B) beneficially owns the whole or any part of a share in the *company*; or~~

~~(C) 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:~~

~~(A) is held out as a *director*; or~~

~~(B) is a *member* of the *company*; or~~

~~(C) 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 *insured firm*, any *person* who is within paragraph (a)(iii) of this definition (including sub-paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub-paragraphs (A) and (C) 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 in accordance with clause 5.6(a) of the MTC.~~

~~**private practice** shall have the meaning set out in the *Glossary*.~~

~~**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.~~

~~**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).~~

~~**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.~~

~~**SA** means the Solicitors Act 1974.~~

~~**schedule** means the Schedule attached to this contract.~~

~~**SIF** means the Solicitors Indemnity Fund.~~

~~**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 and 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 Indemnity Insurance Rules** means the SRA Indemnity Insurance Rules 2012.~~

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

~~**SRA Training Regulations** means the SRA Training Regulations 2011.~~

~~**successor practice** means a practice identified in this definition as 'B', where:~~

- ~~(a) 'A' is the practice to which B succeeds; and~~
- ~~(a) 'A's owner' is the owner of A immediately prior to transition; and~~
- ~~(a) 'B's owner' is the owner of B immediately following transition; and~~
- ~~(a) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal practice.~~

~~B is a successor practice to A where:~~

- ~~(i) 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~~
- ~~(ii) (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~~

- ~~(iii) (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~~
- ~~(iv) (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~~
- ~~(v) (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~~
- ~~(vi) (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:~~
- ~~(A) 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~~
- ~~(B) B is carried on from the same premises as A; and/or~~
- ~~(C) the owner of B acquired the goodwill and/or assets of A; and/or~~
- ~~(D) the owner of B assumed the liabilities of A; and/or~~
- ~~(E) the majority of staff employed by A's owner became employees of B's owner.~~

~~Notwithstanding the foregoing, B is not a successor practice to A under paragraph (ii), (iii), (iv), (v) or (vi) 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.~~

~~**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 the SRA 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.~~

~~**trustee** includes a personal representative, and "trust" includes the duties of a personal representative.~~

## 9—Governing law

9.1 This insurance shall be governed by and interpreted in accordance with the laws of England and Wales.

## Schedule

### 1 ~~The insured firm~~

~~The insured firm is:~~

### 2 ~~Parties~~

~~This contract is made between the insurer, the insured firm, and each principal of the insured firm (including, where the insured firm is a sole practitioner, any person held out as a partner of that practitioner) and each such principal is jointly and severally liable to the insurer for all sums due to the insurer under this contract in accordance with Rule 10.3 of the SRA Indemnity Insurance Rules.~~

### 3 ~~The insurer~~

~~The insurer is:~~

~~{The lead insurer is: \_\_\_\_\_}~~

### 4 ~~Sum insured~~

~~The sum insured for any one claim (exclusive of defence costs) is [£2 million / £3 million].~~

### 5 ~~[Limit of indemnity hereunder]~~

~~{..... any one claim excess of ..... (the Underlying Limit)}~~

~~{Proportionate share of liability (%)}~~

~~{.....}~~

### 6 ~~The excess~~

~~The excess is:~~

### 7 ~~Period of insurance~~

~~The period of insurance is from:~~

~~to midnight on:~~

## Part 2

### Contract of ARP run-off insurance

~~If an insured firm is issued with an ARP run-off policy, run-off cover shall be provided through the ARP, which shall indemnify each insured in accordance with clauses 1.1 to 1.8 of the ARP policy set out in Part 1 of this Appendix 1 to Schedule 2, (but subject to the limits, exclusions and conditions of the ARP policy).~~

~~The period of cover provided by the ARP run-off policy shall be as determined under Rule 14.5.~~

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## Part 3

### Excess indemnity

~~If cover is provided through the ARP jointly with other *qualifying insurers* on an excess of loss basis, and the ARP is writing one of the excess layers, the terms of the ARP policy shall be as set out in Part 1 of this Appendix 1 to Schedule 2, but subject to the following terms:~~

~~1— Clause 3 shall not apply in relation to the excess layer.~~

~~2— The following additional terms shall apply:~~

#### ~~1— Additional provisions~~

~~1.1 The *insurer* is liable for an amount representing the excess over the Underlying Limit on an Ultimate Net Loss basis. The Ultimate Net Loss shall mean the sum which is finally ascertained to be the sum which *insurers* are liable for as a result of the loss insured but shall exclude *defence costs*.~~

~~1.2 All salvages, recoveries or payments recovered or received after a settlement under this *policy* shall be applied as if recovered or received before the settlement and all necessary adjustments shall be made by the parties. This shall not prevent any such recovery being made before the Ultimate Net Loss is ascertained.~~

~~1.3 If a loss or liability arises to which the *insurer* may be liable to contribute, no *defence costs* shall be incurred on behalf of it without its prior consent. Where a *claim* is settled for a sum not exceeding the Underlying Limit no *defence costs* shall be payable by the *insurer*.~~

~~1.4 The *lead insurer* shall not settle any *claim* for a sum exceeding the Underlying Limit without the prior consent of the *insurer* (such consent not to be unreasonably withheld or delayed).~~

### Schedule 3Schedule 4

## Schedule 1 ~~Schedule 5~~ - SRA Indemnity Insurance Rules ~~2012~~ [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.

<b>Part</b>	<b>Page</b>
<b>Part 1 General</b> .....	<b><u>53</u><u>20</u></b>
Rule 1 Authority and commencement.....	<u>53</u> <u>20</u>
Rule 2 Citation .....	<u>53</u> <u>20</u>
Rule 3 Definitions and interpretation.....	<u>54</u> <u>21</u>
<b>Part 2 Responsibility and monitoring</b> .....	<b><u>54</u><u>21</u></b>
Rule 4 Obligation to effect insurance.....	<u>54</u> <u>21</u>
Rule 5 Responsibility .....	<u>55</u> <u>22</u>
Rule 6 Insolvency of <del>qualifying</del> <u>participating</u> insurer.....	<u>56</u> <u>23</u>
Rule 7 Monitoring.....	<u>57</u> <u>23</u>
Rule 8 RELs.....	<u>57</u> <u>23</u>
<b>Part 3 The ARP</b> .....	<b><u>57</u><u>23</u></b>
Rule 9 <del>Operation of the ARP</del> .....	<del><u>57</u></del> <u>[Deleted]</u> <u>23</u>
Rule 10 <del>Applying to the ARP</del> .....	<del><u>57</u></del> <u>[Deleted]</u> <u>23</u>
Rule 11 <del>Special measures</del> .....	<del><u>59</u></del> <u>[Deleted]</u> <u>23</u>
Rule 12 <del>Time in the ARP</del> .....	<del><u>60</u></del> <u>[Deleted]</u> <u>23</u>
Rule 13 Power to collect contribution from firms .....	<u>64</u> <u>23</u>
<b>Part 4 Firms in default</b> .....	<b><del><u>64</u></del><u>[Deleted]</u> <u>24</u></b>
Rule 14 <del>Eligibility of firms in default</del> .....	<del><u>64</u></del> <u>[Deleted]</u> <u>24</u>
Rule 15 <del>Firms which fail to apply to the ARP</del> .....	<del><u>63</u></del> <u>[Deleted]</u> <u>24</u>
<b>Part 5 Disciplinary offences and reporting</b> .....	<b><u>63</u><u>24</u></b>
Rule 16 Disciplinary consequences of failure to comply with these Rules.....	<u>63</u> <u>24</u>
Rule 17 Use of information .....	<u>64</u> <u>24</u>
Rule 18 Details of <del>qualifying</del> <u>participating</u> insurer.....	<u>65</u> <u>25</u>
<b>Part 6 General powers of the Council</b> .....	<b><u>66</u><u>26</u></b>
Rule 19 Waiver powers.....	<u>66</u> <u>26</u>
<b>Part 7 Other obligations</b> .....	<b><u>67</u><u>27</u></b>
Rule 20 Accountants' reports.....	<u>67</u> <u>27</u>
<b>Appendix 1 SRA Minimum Terms and Conditions of Professional Indemnity Insurance</b> .....	<b><u>68</u><u>28</u></b>
1 Scope of cover.....	<u>68</u> <u>28</u>
2 Limit of insurance cover.....	<u>70</u> <u>30</u>
3 Excesses.....	<u>71</u> <u>31</u>
4 Special conditions.....	<u>71</u> <u>31</u>
5 Extended indemnity period and run-off cover.....	<u>73</u> <u>33</u>
6 Exclusions.....	<u>75</u> <u>35</u>
7 General conditions.....	<u>77</u> <u>37</u>
8 Definitions and interpretation.....	<u>78</u> <u>38</u>
<b>Appendix 2 <del>Rating schedule for 2012/2013</del></b> .....	<b><del><u>79</u></del><u>[Deleted]</u> <u>39</u></b>
1 <del>Method for calculation of the ARP premium</del> .....	<del><u>79</u></del>
2 <del>Method for calculation of the ARP default premium</del> .....	<del><u>83</u></del>
3 <del>Method for calculation of the ARP run-off premium</del> .....	<del><u>83</u></del>
<b>Appendix 3 Special provisions for RELs</b> .....	<b><u>85</u><u>40</u></b>
<b><u>Appendix 4 [Deleted]</u></b> .....	<b><u>42</u></b>

## Part 1 General

### Rule 1 Authority and commencement

- 1.1 These Rules are made on ~~22 June 2012~~<sup>[1]</sup> 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 ~~2012~~<sup>2013</sup>.
- 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 ~~qualifying~~<sup>participating</sup> *insurers* with effect from 1 October ~~2012~~<sup>2013</sup>.

*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 ~~2012~~<sup>2013</sup>. 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 ~~2012~~<sup>2013</sup>.

*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 ~~2012~~<sup>2013</sup>, firms must take out insurance in accordance with these Rules with one or more ~~qualifying~~<sup>participating</sup> *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 ~~2011~~<sup>2012</sup> shall not apply in respect of any *indemnity period* beginning on or after 1 October ~~2012~~<sup>2013</sup> but they shall remain in force in respect of the *indemnity period* from 1 October ~~2011~~<sup>2012</sup> to 30 September ~~2012~~<sup>2013</sup> 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~~<sup>2011 and 2012</sup>.*

### Rule 2 Citation

- 2.1 These Rules may be cited as the SRA Indemnity Insurance Rules ~~2012~~<sup>2013</sup>.

## 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 ~~2012~~2013 must take out and maintain *qualifying insurance* under these Rules.
- 4.2 A *firm* ~~that has been unable to renew its existing~~ must:
- (a) obtain a policy of qualifying insurance ~~or 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 from an alternative qualifying insurer prior to the expiration 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 ~~must~~ 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 ~~enduring or before~~ prior to the expiry of the *cessation period* ~~which that~~ provides cover that incepting on and with effect ~~on and~~ from the ~~commencement~~ expiry of the ~~extended indemnity 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 ~~5.3.5.2~~.
- 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*.

~~3.4 A run-off firm must apply in accordance with these Rules to be issued with an ARP run-off policy.~~

*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 ~~2012~~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 qualifying participating insurer. A list of qualifying participating insurers appears on the website of the SRA at [www.sra.org.uk](http://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 ~~2012 indemnity policy~~ period, fails to obtain a policy of qualifying insurance from a ~~qualifying participating~~ insurer ~~for a period of insurance~~ commencing on ~~1 October 2013~~ the day following such expiration, the firm's ~~qualifying participating~~ insurer ~~(except for the ARP)~~ 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 (~~that is, before the expiry of~~ 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 incepts or is backdated to incept with effect on and from the ~~commencement~~ expiry of the ~~new indemnity 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 ~~5.3.5.2~~. 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 ~~qualifying participating~~ insurer ~~(except for the ARP)~~ 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 ~~qualifying 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 ~~before the end of an indemnity period~~ unless:

- ~~1. the policy is an ARP policy and the firm has replaced it with a policy of qualifying insurance outside the ARP; or~~
1. ~~2.~~ the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or
2. ~~3.~~ it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or
- ~~4. in the case of an ARP policy, it subsequently transpires that the firm was not, or has ceased to be, an eligible firm; or~~
3. ~~5.~~ the ~~qualifying 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.

~~The effect of cancellation in the circumstances described in 3 or 4 above is that the firm ceases to have qualifying insurance in place with effect from the cancellation, and would therefore be in breach of Rule 4.1 if it were to carry on a practice thereafter without taking out a new policy.~~

*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 ~~3.5~~ 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 ~~during any indemnity period beginning~~ on or after 1 October ~~2012, 2013~~, and any person who is a principal of such a firm, must ensure:

~~(a) that the firm has in place and maintains qualifying insurance outside the ARP during any such indemnity period;~~

~~or, in the case of an eligible firm,~~

~~(b) that the firm has applied to enter the ARP in accordance with the procedure set out in Rule 10; in either case before the start of any relevant indemnity period or the start of practice whichever is later 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.*

- ~~4.2 A run-off firm, and any person who was a principal of that run-off firm immediately prior to it becoming a run-off firm, must ensure that the run-off firm has applied to enter the ARP in accordance with the procedure set out in Rule 14.4(a). Making such an application does not absolve any firm or person from any breach of Rule 5.1.~~

~~*Commentary: A firm which has continued to practise without qualifying insurance immediately prior to closing down is required to apply for run-off cover through the ARP, but the firm and any principal of the firm may still face action for a breach of Rule 5.1 for practising without qualifying insurance.*~~

- 5.2 ~~4.3~~ 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 qualifying participating insurer

- 6.1 If a firm is carrying on a practice which is being provided with qualifying insurance by a qualifying participating insurer (whether alone or together with other qualifying participating insurers) and that qualifying 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:

~~(a) that the firm has in place qualifying insurance with another qualifying 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;~~

~~or, in the case of an eligible firm,~~

~~(b) that the firm applies within that period of four weeks to enter the ARP in accordance with the procedure set out in Rule 10.~~

*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 qualifying participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a qualifying 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 qualifying 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.*

~~5.2—Any firm that enters the ARP by reason of a qualifying insurer being subject to an insolvency event may not remain in the ARP beyond 30 September 2013, regardless of the date on which the firm entered the ARP, except in respect of an ARP policy under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the ARP policy commences on or before 1 October 2013 or an ARP run-off policy which incepts on or before 30 September 2013).~~

## 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 ~~Operation of the ARP~~ [Deleted]

~~8.1—The ARP shall be managed by the ARP manager.~~

### Rule 10 ~~Applying to the ARP~~ [Deleted]

~~9.1—Where a firm carrying on a practice has not obtained qualifying insurance outside the ARP in respect of any indemnity period or part thereof to which these Rules apply it must, if an eligible firm, apply in accordance with the procedure set out in this Rule 10 to enter the ARP, subject to Rule 10.2, before the start of the relevant indemnity period.~~

~~*Commentary:—A firm which for any reason does not have qualifying insurance in place should apply to the ARP before the start of the relevant indemnity period if it is an eligible firm. However, it is important to note that premiums payable to the ARP are intended to be high, and firms would therefore be prudent to seek quotations from qualifying insurers outside the ARP before the start of an indemnity period.*~~

~~*An ARP policy can be cancelled if it is replaced by a policy with a qualifying insurer. A return premium may be payable to a firm which cancels an ARP policy in these circumstances—refer to Appendix 2 for the basis on which the ARP premium and any return premium is calculated.*~~

~~*Firms should also be aware of the other consequences of being insured through the ARP set out in this part of the Rules, including the need to comply with any*~~

~~special measures under Rule 10, and the limitations on eligibility set out in the definition of “eligible firm”.~~

~~9.2 A firm must not start carrying on a practice without having obtained qualifying insurance outside the ARP.~~

~~Commentary: Any firm wishing to start up a new practice must obtain qualifying insurance with a qualifying insurer other than the ARP, before starting practice. For the avoidance of doubt, a firm which has not previously been regulated by the SRA or a non-SRA firm that elects (and is accepted) for regulation by the SRA must also arrange qualifying insurance outside the ARP in order to commence carrying on a practice. Subject to this requirement, a new firm may start practice at any time during an indemnity period.~~

~~9.3 By applying to enter the ARP, the firm and any person who is a principal of that firm agrees to, and (if the firm is admitted to the ARP) the firm and any person who is a principal of that firm shall be jointly and severally liable to:~~

- ~~(a) pay the ARP premium in accordance with these Rules, together with any other sums due to the ARP manager under the ARP policy; and~~
- ~~(b) submit to such investigation and monitoring and to pay the Society’s costs and expenses as referred to in Rule 11.2; and~~
- ~~(c) pay any costs and expenses incurred by the Society or the ARP manager incurred as a result of any failure or delay by the firm in complying with these Rules;~~

~~and shall be required to implement at the expense of the firm any special measures.~~

~~9.4 Any material misrepresentation made in an application for admission to the ARP shall, subject to any waiver under Rule 19.1, render the firm a firm in default for the purposes of Part 4 of these Rules. The provisions of that Part shall apply to the firm as if that firm had not been admitted to the ARP but neither the firm nor any principal of the firm shall be entitled to the refund of any ARP premium paid to the ARP manager. Any amount so paid shall be credited against any sums payable under Part 4 of these Rules.~~

~~Commentary: Although an ARP policy, once issued, cannot be cancelled (unless and until a replacement policy with a qualifying insurer is issued to that firm), a firm which makes a material misrepresentation in its application to be admitted to the ARP will be nevertheless treated in the same way as a firm in default.~~

~~9.5 The application for admission to the ARP must be made to the ARP manager on the proposal form provided by the ARP manager.~~

~~9.6 The applicant must state on the proposal form the date from which cover is sought. This date must not be earlier than the date on which the application is made for admission to the ARP. The applicant must also provide such other information as the ARP manager requires for the purposes of setting a premium.~~

~~9.7 If the applicant is a firm in default it must state on the proposal form that it is a firm in default and give the date of the start of the period of default from which retrospective cover is sought.~~

~~Commentary: The ARP premium is calculated in accordance with a formula set out in Appendix 2, and is linked to the gross fees of the firm concerned. It is important to note that, under Rule 15, any material misrepresentation in an application will result in the firm being treated in the same way as a firm in default, including being liable to pay the ARP default premium.~~

~~9.8 The firm, together with each principal of the firm, must ensure that the firm's application has been made and must provide the ARP manager with all information it reasonably requires to process the application.~~

~~Commentary: It is in the interests of the firm and each of the principals of that firm to verify that the application to enter the ARP has been received and that the firm is insured. An application should be made before the start of an indemnity period. Failure to comply with the requirements of this Rule and Rules 14 and 15 will result in the firm becoming a firm in default.~~

~~9.9 If a firm has not received a written acknowledgement of its application from the ARP manager 30 days after making the application, or within such other period as is stated on the proposal form, the firm and any person who is a principal of the firm must seek written confirmation that the firm's application has been received by the ARP manager. If that written confirmation is not obtained within seven days after the end of the 30 days, or within seven days after such other period specified on the proposal form, the application shall be deemed not to have been made.~~

~~9.10 An applicant whose first application is deemed under Rule 10.9 not to have been made must, within seven days of the day when under Rule 10.9 the first application is deemed not to have been made, make a fresh application. The firm and any person who is a principal of the firm must ensure that the firm is in a position to prove to the reasonable satisfaction of the Society that the firm's fresh application was delivered within those seven days to the ARP manager at the address specified on the proposal form. Provided the firm's fresh application was so delivered, the application shall be treated as having been made at the date when the firm's first application was made. A firm that is not in a position to prove to the reasonable satisfaction of the Society that its fresh application was so delivered shall be deemed not to have made any application.~~

~~9.11 Provided that an application or, if necessary, a fresh application, has been made in accordance with Rules 10.5 to 10.10, a firm which is an eligible firm will be covered in the terms of the ARP policy to be issued to it from the start of the relevant indemnity period or, in the case of a firm to which Rule 10.2 applies, the date specified in the application, being the date specified in accordance with Rule 10.6, until whichever is the earlier of:~~

~~(a) the end of the relevant indemnity period; or~~

~~(b) the date on which the firm obtains qualifying insurance outside the ARP; or~~

~~(c) the date when the firm ceases to be an eligible firm.~~

~~Commentary: An eligible firm which should have applied to the ARP before the start of an indemnity period but fails to do so will have breached these Rules by failing to take out a policy from the start of that indemnity period. It may make a later application, but will be liable to pay the ARP default premium for the indemnity period in question. Each principal in an eligible firm which fails to make an application in time commits a disciplinary offence.~~

~~9.12 Any firm in the ARP, and any person who is a principal of that firm, is liable to pay to the ARP manager the ARP premium in respect of that firm within thirty days of such premium being notified to it by the ARP manager.~~

~~Commentary: It is a disciplinary offence for a firm and for any principal of that firm to fail to pay the ARP premium (including the ARP run-off premium) to the ARP manager within the required 30 day period. A firm may enter into arrangements with, for example, a premium funding company (whether offered by the ARP manager or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the ARP manager from the premium funding company within the required 30 day period.~~

**Rule 11 ~~Special measures~~ [Deleted]**

~~10.1 An eligible firm that has applied to enter the ARP in accordance with the procedure set out in Rule 10 will be issued with an ARP policy by the ARP manager.~~

~~Commentary: A copy of the standard-form ARP policy is available on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk) and is also available from the SRA. Contact details appear at the end of the introductory commentary.~~

~~10.2 A firm in the ARP must if and to the extent required by the Council submit to investigation and monitoring by the Society and/or its agents, including investigation and monitoring:~~

~~(a) to determine the reasons why qualifying insurance outside the ARP was not obtained;~~

~~(b) to ascertain what special measures should be taken by the firm.~~

~~The Society's costs and expenses of the investigation and monitoring and the Society's costs and expenses of ascertaining what special measures should be taken and of monitoring them shall be met by the firm and by any person who is a principal of that firm. The amount of such costs and expenses shall be determined by the Society which shall not be required to give any detailed breakdown thereof.~~

**Rule 12 ~~Time in the ARP~~ [Deleted]**

~~11.1 Notwithstanding the provisions of any other Rule, no firm may remain in the ARP beyond 30 September 2013, regardless of the date on which the firm entered the ARP, except in respect of an ARP policy under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the ARP policy commences on or before 1 October 2013 or an ARP run-off policy which incept on or before 30 September 2013.~~

~~11.2 A firm may leave the ARP at any time after it has satisfied the ARP manager that the firm has obtained qualifying insurance outside the ARP at least until the expiry of the relevant indemnity period.~~

~~Commentary: Refer to Appendix 2 to determine whether any return premium will be payable on leaving the ARP.~~

~~11.3 Subject to Rule 12.7, a firm may only remain in the ARP so long as it is an eligible firm, or if it becomes a run-off firm.~~

~~Commentary: A firm cannot remain insured through the ARP for more than 6 months in any four consecutive indemnity periods (unless it satisfies one of the exceptions to this requirement in the definition of "eligible firm"), and should therefore seek insurance in the open market with a qualifying insurer as soon as practicable. A firm which is no longer an eligible firm (because, for example, it has already been insured through the ARP for 24 months in the last four indemnity periods) must either obtain qualifying insurance on the open market or cease carrying on practice.~~

~~11.4 Subject to Rule 12.7(b), a firm in policy default at the end of an indemnity period shall be deemed to be a firm in default for the purposes of Part 4 of these Rules and shall not be an eligible firm. This Rule shall not apply in any case where the Council is satisfied that there exists a genuine dispute between the firm and a qualifying insurer or the ARP manager which makes it unreasonable for the firm to be deemed to be a firm in default pending the resolution of that dispute.~~

~~Commentary: A firm in policy default must remedy that default before the start of an indemnity period if it wishes to obtain insurance through the ARP at any time during that indemnity period. Alternatively, it must either obtain qualifying insurance in the open market, or cease carrying on practice. If a firm believes that there is a genuine dispute which justifies that firm not being deemed to be a firm in default, it~~



~~should apply to the SRA as soon as possible before the start of the next indemnity period. Contact details appear at the end of the introductory commentary.~~

~~11.5 A firm that is no longer an eligible firm must either have qualifying insurance outside the ARP or forthwith cease carrying on practice.~~

~~11.6 The Council may in its absolute discretion treat a successor firm or successor firms (or any of them) and the firm from which such successor firm or successor firms were derived as being a single firm for the purposes of determining whether the successor firm or successor firms or any of them are or remain an eligible firm.~~

~~Commentary: The purpose of this Rule is to ensure that the time limit on participation in the ARP cannot be avoided by a merger or reconstitution of that firm. A firm which was not previously eligible to join the ARP will not necessarily become an eligible firm by virtue of changes in the composition of a firm. Firms which are unsure about their eligibility following any such change should consult the SRA. Contact details appear at the end of the introductory commentary.~~

~~11.7 Subject to a firm not being admitted into, remaining in or re-entering the ARP in respect of any indemnity period commencing after 30 September 2013 (except to permit a firm with an ARP policy which, on or before 1 October 2013, enters the period of run-off cover stipulated by clauses 5.1 and 5.2 of the ARP policy or a firm with an ARP run-off policy as at 30 September 2013, in each case, to continue to receive the run-off cover provided by such policy), the Council shall have power in any particular case or cases:~~

~~(a) to allow a firm to remain in or to re-enter the ARP after any date when the firm would otherwise cease to be an eligible firm; and~~

~~(b) to permit a firm to be admitted into or remain in or to re-enter the ARP notwithstanding that the firm is in policy default on such terms and conditions as the Council may prescribe including the taking of steps by the firm by a specified date or dates to remedy the policy default;~~

~~and when such power is exercised the firm shall continue to be an eligible firm for so long as the Council may from time to time permit and provided that it complies with any such terms and conditions.~~

~~Commentary: It is envisaged that these powers would be exercised only in exceptional circumstances. Any application seeking the exercise of this power should be made to the SRA at least three months before the firm in question would otherwise cease to be an eligible firm.~~

## 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 [qualifying participating insurers](#) agreeing to underwrite the liabilities of the ARP in respect of the indemnity period commencing on 1 October 2012.

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 [qualifying participating insurers](#) agreeing to underwrite the liabilities of the ARP in respect of the indemnity period commencing on 1 October 2012.

## Part 4 ~~Firms in default~~ [Deleted]

### Rule 14 ~~Eligibility of firms in default~~ [Deleted]

~~13.1 At any time during the period of default a firm in default is entitled to be admitted to the ARP and to be issued with an ARP policy in accordance with Rule 14.2, subject to the provisions of this Rule 14.~~

~~13.2 A firm in default is entitled to be admitted to the ARP if:~~

- ~~(a) it was an eligible firm at the start of the period of default;~~
- ~~(b) had it been admitted to the ARP at the start of the period of default, its admission at that time would not have rendered it ineligible to be admitted to the ARP for any part of any subsequent indemnity period in which it was in fact admitted to the ARP;~~
- ~~(c) it has applied to join the ARP in accordance with Rule 10;~~
- ~~(d) the firm discharges in full the ARP default premium calculated for the whole of the indemnity period or indemnity periods for which cover is sought within 30 days of such premium being notified to it by the ARP manager or such longer period as the Council may allow;~~
- ~~(e) the firm will be subject to and comply with Rules 10.3 (other than Rule 10.3(a)) and 11.2.~~

~~Commentary: If a firm fails to make an application to the ARP at the start of an indemnity period, and does not have any other policy of qualifying insurance in force for that indemnity period, it may still be eligible to be issued with an ARP policy provided that it meets all of the requirements of Rule 14.2. However, each principal of the firm will have committed a disciplinary offence, and the firm and each principal of that firm will be liable to pay the ARP default premium under any ARP policy issued.~~

~~13.3 An ARP policy issued under this Rule may afford cover retrospectively from the start of the period of default until the earlier of:~~

- ~~(a) the end of the then current indemnity period; or~~
- ~~(b) the date on which the firm in default would have ceased to be an eligible firm, ignoring for these purposes any failure to pay the ARP premium or the ARP default premium; or~~
- ~~(c) the date on which, had the firm in default been admitted to the ARP at the start of the period of default, its being covered by the ARP from that time would have first caused it to have been ineligible to be admitted to the ARP for any part of any subsequent indemnity period in which it was in fact admitted to the ARP.~~

~~13.4 A run-off firm shall be entitled at any time following the date on which it first becomes a run-off firm to be admitted to the ARP and to be issued with an ARP run-off policy, subject to the following conditions:~~

- ~~(a) the run-off firm has made an application to join the ARP in manner provided by Rule 10.5 stating on the proposal form that it is a run-off firm and giving the date from which cover under an ARP run-off policy is sought;~~
- ~~(b) the ARP run-off premium is discharged in full within thirty days of such premium being notified by the ARP manager to the firm or such longer period as the Council may allow; and~~
- ~~(c) the firm, and any person who is a principal of that firm, will be subject to and comply with Rule 10.3(e).~~



~~Commentary:— A run-off firm will be eligible to be issued with an ARP policy if it meets all of the requirements of Rule 14.4. However, each principal of the firm will have committed a disciplinary offence for failing to make an application to the ARP for run-off cover in accordance with Rule 5.2, and the firm and each principal of the firm will be required to pay the ARP run-off premium under any ARP run-off policy issued.~~

~~13.5 An ARP run-off policy shall provide run-off cover to a run-off firm retrospectively from the date on which it became a run-off firm until the end of the day immediately prior to the sixth anniversary of:~~

- ~~(a) the start of the indemnity period in which it became a run-off firm; or~~
- ~~(b) if applicable, the start of the last indemnity period, prior to it becoming a run-off firm, in which it both ceased to be an eligible firm and was a firm in default and continued as such until the date on which it became a run-off firm,~~

~~whichever is the earlier.~~

~~Commentary:— Run-off firms which are issued with an ARP run-off policy obtain six years' run-off cover either from the start of the indemnity period in which their practice ceased, or the date on which they ceased to be eligible to apply for an ARP policy while practising uninsured.~~

~~13.6 Rule 12.7 shall apply so as to enable the Council to extend the period in Rule 14.3(b) for which a firm in default may be issued with an ARP policy.~~

~~Commentary:— It is envisaged that this power would be exercised only in exceptional circumstances.~~

~~13.7 Any firm that has been admitted to the ARP under Rule 14.1 shall for the purposes of computing its continuing eligibility to remain in the ARP be deemed to have been admitted to the ARP at start of the period of default and to have remained continuously in the ARP until the end of the indemnity period current at the date of its application.~~

~~Commentary:— If a firm is eligible to be issued with an ARP policy under Rule 14.1, or an ARP run-off policy under Rule 14.4 then, provided that it complies with the relevant requirements under Rule 14 and is issued with an ARP policy or an ARP run-off policy, the firm and the principals of that firm will be required to pay to the ARP manager only the relevant premium and the excess in the event of any claim.~~

## **Rule 15 ~~Firms which fail to apply to the ARP~~[\[Deleted\]](#)**

~~14.1 A firm in default which is entitled to be admitted to the ARP and to be issued with an ARP policy in accordance with Rule 14.1 but which does not make an application to join the ARP shall, notwithstanding, be liable, together with any person who is a principal of that firm, to pay to the Society an amount equivalent to the ARP default premium calculated for the whole of the period of default.~~

~~14.2 A firm in default which is entitled to be admitted to the ARP and to be issued with an ARP run-off policy in accordance with Rules 14.4 and 14.5 but which does not make an application to join the ARP shall, notwithstanding, be liable, together with any person who is a principal of that firm, to pay to the Society an amount equivalent to the ARP run-off premium calculated for the whole of the period equivalent to that which would be provided by an ARP run-off policy in accordance with Rule 14.5, or, if shorter and if it can be ascertained, the period of default.~~

~~14.3 Any amount payable in accordance with Rules 15.1 or 15.2 shall be determined by the ARP manager on the basis of such assumption as to the firm's gross fees and other matters as the ARP manager shall in its absolute discretion determine, and may be reviewed from time to time by the ARP manager in its absolute discretion on the basis of any further information provided to it. The ARP manager may and is hereby authorised to recover all sums due under Rules 15.1 or 15.2 on behalf of the Society.~~

~~Commentary: If a firm fails to make an application to the ARP, but carries on practice without having obtained qualifying insurance, each principal in that firm will have committed a disciplinary offence. The same is true if a run-off firm fails to apply to be issued with an ARP run-off policy. In each case, that firm, and each principal in that firm, will also be liable under these Rules to pay an amount to the Society equivalent to the ARP default premium calculated for the whole of the period of default.~~

## Part 5 Disciplinary offences and reporting

### Rule 16 Disciplinary consequences of failure to comply with these Rules

~~15.1 The provisions in Part 4 of the Rules are made without prejudice to the powers of the Council or the Society under the SA, the AJA, the Courts and Legal Services Act 1990, the European Communities (Lawyer's Practice) Regulations 2000 or the LSA, or rules made under any of them, to bring disciplinary proceedings or take disciplinary action against any firm that has failed to comply with these Rules or any person who is or was a principal in such a firm or to intervene in a practice carried on by such a firm.~~

~~Commentary: Payment of the ARP default premium and/or the ARP run-off premium does not detract from the fact that the firm in question, and each principal of that firm, has committed a breach of these Rules as a result of the firm being a firm in default. If a firm in default is not an eligible firm, it must either obtain qualifying insurance in the open market, or cease carrying on practice and make an application to the ARP for run-off cover in accordance with Rule 5.2.~~

#### 16.1

~~15.2~~ 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;
- ~~(b) fail to implement any special measures to the satisfaction of the Society; and~~
- (b) ~~(c)~~ undertake any activities in connection with private legal practice in breach of Rule 5.3.5.2.

~~Commentary: Policy default and special measures are defined in the Glossary. Note that a firm that is carrying on a practice while in policy default will also not be an eligible firm for the purpose of seeking further cover through the ARP.~~

### Rule 17 Use of information

17.1 Any qualifying participating insurer ~~(including the ARP manager)~~ shall, in relation to any firm which applies to it for qualifying insurance, ~~and in the case of the ARP manager any run-off firm or firm in default, whether or not that firm applies to enter the ARP,~~ 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, ~~including an ARP premium, ARP default premium or ARP run-off premium,~~ 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 qualifying 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 qualifying 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 qualifying 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, whether they obtain their qualifying insurance on the open market or through the ARP, or whether, having failed to obtain qualifying insurance, they are subject to the provisions of Part 4 of these Rules, are deemed to have consented to their qualifying participating insurer or the ARP manager 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 qualifying participating insurer ~~or the ARP manager~~ 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.
- 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 qualifying participating insurer in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which ~~cover under a policy is extended in respect of:~~
- (a) the firm enters the extended indemnity period under its policy; and
  - (b) the firm enters the cessation period, under its policy, and
  - (c) ~~in circumstances where the firm does not have an alternative~~ 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 in force at the commencement of each such period, 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* qualifying 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 qualifying 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 qualifying participating insurer(s) who issued the *policy*; and
  - (b) the *policy* number; and
  - (c) the address and contact details of the qualifying 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* qualifying 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 ~~or 2012~~ 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 ~~or 2012~~ 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 ~~or 2012~~ 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 ~~or 2012~~ 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) ~~either~~ that the *firm* has one or more certificates of *qualifying insurance* ~~outside the ARP or~~ (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 qualifying participating insurer is required under the qualifying 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.*

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## 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 **qualifying 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 **qualifying 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 **qualifying 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, ~~but only where, in the case of insurance not provided wholly or partly by the ARP, the replacement insurance is not provided wholly or partly by the ARP,~~ 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 indemnity 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; ~~or~~

~~(d) — in the case of an ARP policy, it subsequently transpires that the *insured firm* was not or has ceased to be an *eligible firm*, in which case cancellation shall have effect from the date on which it ceased to be an *eligible firm*.~~

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 6.4.6.1; 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.

#### 4.12 Period of insurance

~~The period of insurance must not expire prior to 30 September 2013.~~

## 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 ~~last indemnity period to which the policy relates or during the extended indemnity policy period~~, obtained insurance complying with the MTC ~~for the indemnity period or the remainder of the indemnity period (as the case may be) which immediately follows the indemnity period to which the policy relates~~ 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 ~~MTCs for the indemnity period or the remainder of the indemnity period (as the case may be) which immediately follows the last indemnity period to which the policy relates~~ 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 on and ~~and~~ from the commencement day immediately following the expiration of the ~~extended indemnity 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 qualifying 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.

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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*.

### ~~7.8 Co-operation and assistance~~

~~The insurance (except in the case of an *ARP* policy) must provide that, if the *ARP* manager is appointed to conduct any *claim*, each *insured* will give the *ARP* manager and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible *claim* or any related proceeding.~~

## 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 \[Deleted\]](#)

### 8.3 Appendix 2

Rating schedule for 2012/2013

#### Rule 1 Method for calculation of the ARP premium

1.1 The annual ARP premium is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the insured firm. For a £2 million primary policy (£3 million in the case of relevant recognised bodies and relevant licensed bodies (in respect of their regulated activities)), where the Gross Fees are £500,000 or less, the annual ARP premium is calculated at a rate of 27½% of the fees declared (30% in the case of relevant recognised bodies and relevant licensed bodies (in respect of their regulated activities)). Where the Gross Fees of the insured firm are £500,001 or more, the annual ARP premium is the sum of:

- the maximum premium for the previous fee band; plus
- the marginal rate on Fees applied to the amount of fees that exceed the ceiling of the previous fee band.

There is a minimum premium of £1,500 irrespective of the level of Gross Fees, or the period of time spent in the ARP during an indemnity period.

1.2 Firms other than relevant recognised bodies and relevant licensed bodies (£2 million indemnity limit)

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	27.5%	$27.5\% \times £500,000 = £137,500$	£137,500	27.50%
2 £500,001 to £1,500,000 e.g. if fees £1,000,000	22%	£137,500 (maximum premium for fee band 1) plus $22\% \times £1,000,000 = £220,000 = £357,000$ $£137,500 \text{ plus } (22\% \times £500,000 = £110,000) = £247,500$	£357,000	23.826%
3 £1,500,001 to £3,000,000 e.g. if fees £2,250,000	16.5%	$16.5\% \times £1,500,000 = £247,500$ plus £357,000 (maximum premium for fee band 2) = £605,000 $£357,000 \text{ plus } (16.5\% \times £750,000 = £123,750) = £481,250$	£605,000	20.163%
4 £3,000,001 to £5,000,000 e.g. if fees £4,000,000	13.2%	$13.2\% \times £2,000,000 = £264,000$ plus £605,000 (maximum premium for fee band 3) = £869,000 $£605,000 \text{ plus } (13.2\% \times £1,000,000 = £132,000) = £737,000$	£869,000	17.38%
5 £5,000,001 to £20,000,000 e.g. if fees £10,000,000	11%	$11\% \times £15,000,000 = £1,650,000$ plus £869,000 (maximum premium for fee band 4) = £2,519,000 $£869,000 \text{ plus } (11\% \times £5,000,000 = £550,000) = £1,419,000$	£2,519,000	12.595%
6 £20,000,001 + e.g. if fees £30,000,000 or if fees £50,000,000	5.5%	$5.5\% \times (\text{actual fees} - £20,000,000)$ plus £2,519,000 (maximum premium for fee band 5) = (annual premium) $£2,519,000 \text{ plus } (5.5\% \times £10,000,000) = £550,000 = £3,069,000$ $£2,519,000 \text{ plus } (5.5\% \times £30,000,000 = £1,650,000) = £4,169,000$	—	—

1.3 Relevant recognised bodies and relevant licensed bodies (£3 million indemnity limit)

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	24%	£150,000 (maximum premium for fee band 1) plus $24\% \times £1,000,000 = £200,000 = £390,000$ $£150,000 \text{ plus } (24\% \times £500,000 = £120,000) = £270,000$	£390,000	25.992%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	18%	$18\% \times £1,500,000 = £270,000$ plus £390,000 (maximum premium for fee band 2) = £660,000 $£390,000 \text{ plus } (18\% \times £750,000 = £135,000) = £525,000$	£660,000	24.196%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	14.4%	$14.4\% \times £2,000,000 = £288,000$ plus £660,000 (maximum premium for fee band 3) = £948,000 $£660,000 \text{ plus } (14.4\% \times £1,000,000 = £144,000) = £804,000$	£948,000	18.96%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	12%	$12\% \times £15,000,000 = £1,800,000$ plus £948,000 (maximum premium for fee band 4) = £2,748,000 $£948,000 \text{ plus } (12\% \times £5,000,000 = £600,000) = £1,548,000$	£2,748,000	13.74%
6 £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	6%	$6\% \times (\text{actual fees} - £20,000,000)$ plus £2,748,000 (maximum premium for fee band 5) = (annual premium) $£2,748,000 \text{ plus } (6\% \times £10,000,000) = £600,000 = £3,348,000$ $£2,748,000 \text{ plus } (6\% \times £30,000,000 = £1,800,000) = £4,548,000$	—	—

#### 1.4 Primary layer rates

Where an ARP policy is written as a primary layer of £1 million, with excess layer(s) provided by a qualifying insurer, the annual premium due to the ARP in respect of that policy shall be an amount calculated in accordance with the table below:

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	25%	$25\% \times £500,000 = £125,000$	£125,000	25.00%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	20%	£125,000 (maximum premium for fee band 1) plus $20\% \times £1,000,000 = £200,000 = £325,000$ $£125,000 \text{ plus } (20\% \times £500,000 = £100,000) = £225,000$	£325,000	21.66%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	15%	$15\% \times £1,500,000 = £225,000$ plus £325,000 (maximum premium for fee band 2) = £550,000 $£325,000 \text{ plus } (15\% \times £750,000 = £112,500) = £437,500$	£550,000	18.33%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	12%	$12\% \times £2,000,000 = £240,000$ plus £550,000 (maximum premium for fee band 3) = £790,000 $£550,000 \text{ plus } (12\% \times £1,000,000 = £120,000) = £670,000$	£790,000	15.80%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	10%	$10\% \times £15,000,000 = £1,500,000$ plus £790,000 (maximum premium for fee band 4) = £2,290,000 $£790,000 \text{ plus } (10\% \times £5,000,000 = £500,000) = £1,290,000$	£2,290,000	11.45%

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
<del>£20,000,001 +</del>	<del>5%</del>	<del>5% x (actual fees — £20,000,000) plus £2,290,000 (maximum premium for fee band 5) = (annual premium)</del>	<del>—</del>	<del>—</del>
<del>e.g. if fees £30,000,000</del>		<del>£2,290,000 plus (5% x £10,000,000) = £500,000 = £2,790,000</del>		
<del>or if fees £50,000,000</del>		<del>£2,290,000 plus (5% x £30,000,000 = £1,500,000) = £3,790,000</del>		

#### 1.5—Excess layer rates

~~Where an ARP policy is written as an excess layer and the primary layer is provided by a qualifying insurer, the annual premium due to the ARP in respect of that policy shall be an amount equal to the percentage set out below of the primary layer rate calculated in accordance with the table above:~~

Excess layer	Percentage of primary layer rate
<del>£1 million excess of £1 million (or any part thereof)</del>	<del>10%</del>
<del>£2 million excess of £1 million (or any part thereof)</del>	<del>20%</del>
<del>£1 million excess of £2 million (or any part thereof)</del>	<del>10%</del>

#### 1.6—Co-insurance

~~Where an ARP policy is written as co-insurance, on the basis that one or more other qualifying insurers are liable in respect of a proportion only of the sum insured, the premium due to the ARP in respect of that policy shall be an amount equal to  $T \times P$ , where:~~

~~**T** = the total annual premium (including any default charge in accordance with Part 2) that would have been due to the ARP in relation to that policy if the ARP was the only insurer multiplied by the short period ARP premium scale determined in accordance with paragraph 1.7 (if applicable)~~

~~**P** = the proportion, expressed as a percentage, in respect of which the ARP is liable in relation to that policy~~

#### 1.7—Short Period ARP premium and ARP default premium

~~Subject to paragraph 1.10, in the case of a firm which:~~

~~(a) obtains a policy of qualifying insurance from the ARP for any period other than twelve months commencing on the first day of an indemnity period; or~~

~~(b) has a policy of qualifying insurance from the ARP which ceases before the end of the indemnity period including where the firm ceases to be an eligible firm or because it cancels the ARP policy before the end of the indemnity period because it has obtained a policy of qualifying insurance outside the ARP,~~

~~the ARP premium or ARP default premium payable in accordance with Part 1 of this Appendix shall, in respect of paragraph (a), be calculated or, in respect of paragraph (b), be re-calculated in proportion to the part of the indemnity period for which the firm obtains cover from the ARP on the basis of the formula:~~

where:

$P$  is the annual *ARP premium* or *ARP default premium* (as the case may be) calculated for the whole of the *indemnity period*;

$N$  is the number of days during the *policy period* (inclusive of the first and last day of the *policy period*); and

$Y$  is 365.

Subject to paragraph 1.10, in the case of a *firm* to which paragraph 1.7(b) is applicable, a return premium shall be due to the *firm* concerned where the recalculated *ARP premium* or *ARP default premium* in respect of that *firm* is less than the *ARP premium* or *ARP default premium* paid by the *firm*, and the return premium shall be equal to the amount of that excess (if any). The *ARP manager* shall rebate the amount of the return premium to the *firm*.

However, there shall be no return premium due to the *insured firm* in the event that any claims, or circumstances that may give rise to claims, have been notified to the *ARP manager* during the *policy period* concerned. Furthermore, in the event that the *ARP insurers* are called upon to deal with a claim that was first made against the *insured firm* during the *policy period* concerned, but which claim the *insured firm* failed to notify to the *ARP manager*, the amount of the return premium shall be repaid to the *ARP manager*. The *ARP manager* may set off any return premium due to the *insured firm* against any part of the *ARP premium* which is due in respect of that *insured firm* but which remains unpaid.

#### 1.8 Definition of Gross Fees

For the purposes of the *ARP* rating, *Gross Fees* means all professional fees of the *insured firm* for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the *insured firm* and notarial fees where a solicitor notary operates a notarial *practice* in conjunction with a solicitor's *practice*, but excluding only:

- (a) interest;
- (b) the reimbursement of disbursements;
- (c) any amount charged in respect of value added tax;
- (d) remuneration derived from any office excluded from the definition of *private practice* by these Rules;
- (e) dividends;
- (f) rents received by the *insured firm*;
- (g) income and capital profits from reserved funds established or other investments made by the *insured firm*.

Where the *insured firm* has been in existence for less than 12 months, the *Gross Fees* for *ARP* rating purposes shall be the *insured firm's* best estimate of the *Gross Fees* likely to be received during its first 12 months of trading. However, where the expiry date of the *indemnity period* precedes the completion date of the first 12 months of trading, the *Gross Fees* for *ARP* rating purposes shall be the *insured firm's* best estimate of the *Gross Fees* likely to be received during the period commencing with the starting date of the *practice* and ending with the expiry date of the *indemnity period*.

In the event that the estimated amount of *Gross Fees* differs from the actual amount of *Gross Fees* for the relevant period, the *ARP premium* shall be adjusted by reference to the actual amount of *Gross Fees*.

#### 1.9 Premium payment

The *ARP premium* shall be paid to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

#### 1.10 Run-off premium

If an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*, no return premium shall be payable to that *insured firm* in respect of that *ARP policy*.

In addition, in such circumstances the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every *person* held out as a partner of a *sole practitioner*) shall be required to pay to the *ARP* an additional premium equal to:

- ~~12/13 of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable, where such *indemnity period* was the period from 1 September 2003 to 30 September 2004; or~~
- ~~100 per cent of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable or would have been payable had the *insured firm* participated in the *ARP* for the whole of that *indemnity period*, in the case of any other *indemnity period*.~~

Such additional premium shall be payable to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

#### 1.11 Suspended Practices

If:

- ~~an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*; and~~
- ~~that *insured firm's practice* subsequently restarts; and~~
- ~~the *ARP manager* agrees to cancel such run-off cover~~

~~the *insured firm* shall be entitled to such reimbursement of premium (if any), as the *ARP manager* considers appropriate.~~

~~If, in addition, the *ARP manager* agrees to provide continuing cover in accordance with paragraph 5.7(b)(ii) of the *MTC*, the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every *person* held out as a partner of a *sole practitioner*) shall be liable to pay such additional premium (if any) as the *ARP manager* considers appropriate.~~

#### 1.12 Self-Insured excesses for 2012/2013

~~The self-insured excess for each and every claim shall be calculated by multiplying the relevant number of *principals* by £4,500, subject to a maximum of £225,000 each claim. The relevant number of *principals* is the number of *principals* (including, for these purposes, every *person* held out as a partner of a *sole practitioner*) as at the inception date of the *policy*.~~

## ~~2 Method for calculation of the ARP default premium~~

~~The ARP default premium shall be an amount equal to the ARP premium calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.~~

## ~~3 Method for calculation of the ARP run-off premium~~

~~The ARP run-off premium shall be an amount equal to  $A + B - C$ , where:~~

~~**A** = The amount that would have been payable as the ARP default premium calculated in accordance with Part 2 above in relation to each indemnity period in which the firm has failed (whether for the whole of any part thereof) to obtain qualifying insurance prior to it becoming a run-off firm (including the indemnity period in which it ceased to practise)~~

~~**B** = A further amount equal to that which would have been payable as the ARP default premium calculated in accordance with Part 2 above (excluding any reduction under Part 1 paragraph 1.7) in relation to the indemnity period during which the firm ceased to practise~~

~~**C** = Any sum due under Rule 15.2.~~

~~Commentary: In respect of A, the ARP default premium is calculated for the actual period during which the firm has practised whilst uninsured. The calculation shall be undertaken on an annual basis for each indemnity period in which the firm failed to obtain qualifying insurance subject to a pro rata reduction (pursuant to Part 1 paragraph 1.7) for any part of each such indemnity period for which the firm obtained qualifying insurance.~~

~~————— In respect of B, the ARP default premium is calculated on an annual basis for the whole of the indemnity period in which the firm ceased practise irrespective of whether the firm obtained qualifying insurance for any part of that indemnity period.~~



**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 earlier of:~~

~~(a) 30 September 2013; or~~

~~(b) 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 ~~2012-2013~~.

- 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 ~~qualifying~~ 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 ~~qualifying~~ participating *insurer*.



[Appendix 4 \[Deleted\]](#)

~~Schedule 2~~ **Schedule 6**

~~Declarations of Relevant~~ Declaration Premium Income by ~~qualifying~~ participating insurer

~~(Schedule 1, paragraph 3)~~

**Part 1**

INDEMNITY YEAR ~~2012/~~2013/2014

To be completed by the Qualifying Participating Insurer and returned to the ~~ARP Manager within 10 business days following the start of each~~ Law Society by no later than 1 December 2014 in respect of the Indemnity Period—ending on 30 September 2014.

Name of

~~Qualifying~~ Participating  
Insurer

.....

~~Best estimate of~~

~~Relevant~~ Declaration Premium  
Income

£.....

~~Relevant Premium Income~~ has the meaning given in Schedule 1.

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

Signed: .....

Print name: .....

For and on behalf of the ~~Qualifying Insurer named above~~

~~Date:~~ .....

**Part 2**

**INDEMNITY YEAR 2012/2013**

~~To be completed by the Qualifying Insurer) and returned to the ARP Manager by no later than 28 February in each Indemnity Period.~~

~~Name of Qualifying Insurer~~

.....

~~Relevant Premium Income~~

£.....

~~Relevant Premium Income~~ has the meaning given in Schedule 1.

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

Signed: .....

~~Print name: .....~~ For and on behalf of the Qualifying Participating Insurer named above

Date: .....

~~Schedule 3~~ ~~Schedule 7~~

Certificates of Insurance

Part A

**CERTIFICATE OF QUALIFYING INSURANCE**

(In accordance with Rule 4 SRA Indemnity Insurance Rules ~~2012~~2013)

**INDEMNITY YEAR ~~2012/2013/2014~~**

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

	Share of compulsory cover underwritten / Limit of indemnity
<del>Qualifying</del> Participating Insurer [and Lead Insurer]*	.....
Other <del>Qualifying</del> 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	..... <del>to 30 September 2013 both days inclusive</del>
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 ~~2012~~2013)

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

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

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

[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 Schedule 8**  
**Pro forma Insured Firms Report**

(Clause ~~6.11~~6.10)

In this Schedule ~~6 Relevant Premium Income, Actual Premium Payable and Calculated Premium Payable~~ shall each have the respective meaning given in Schedule 1.

<u>SRA Firm Head Office ID No.</u>	Firm Name	<i>Either Or</i>		<u>Full Postcode (including space)</u>	Policy number	Inception Date	Expiry Date	<u>Policy renewed, policy expired or new business</u>	<u>Firm in Extended Indemnity Period or Cessation Period</u>		COMPULSORY LAYERS			
		<del>SRA Firm ID No</del>	<del>Full address</del>						<u>Policy Extended Indemnity Period (EIP) or Renewed Cessation Period (CP)</u>	<u>Basis Date of Relevant Premium Income: Actual Premium Payable/ Calculated Premium Payable</u>	1st £1m layer - % written	2nd £1m layer (£1m in excess of £1m) - % written	3rd £1m layer (£1m in excess of £2m) - % written	

**Schedule 9**  
Binding Authority Agreement

# ~~Non-Marine~~ ~~Binding Authority Agreement~~

~~(Excluding U.S.A. & Canada Domiciled Coverholders)~~

~~LMA3019 (Broker)~~  
~~(20/07/2006)~~  
Form approved by Lloyd's Market Association  
Table of Contents

Title	Section
<b>FORMATION, SCOPE AND TERMINATION</b>	
EFFECTIVE DATE	
PERIOD	
PERSONS RESPONSIBLE FOR OPERATION AND CONTROL	
GRANT OF AUTHORITY	
DELEGATION OF AUTHORITY	
AUTHORIZED CLASS(ES) OF BUSINESS AND COVERAGE(S)	
EXCLUDED CLASS(ES) OF BUSINESS AND COVERAGE(S)	
PERIOD OF INSURANCES BOUND	
MAXIMUM LIMITS OF LIABILITY/SUMS INSURED	
GROSS PREMIUM INCOME LIMIT	
TERRITORIAL LIMITATIONS	
AGGREGATES	
PREMIUMS, DEDUCTIBLES AND EXCESSES FOR INSURANCES BOUND	
OTHER CONDITIONS AND/OR REQUIREMENTS RELATING TO THE OPERATION OF THE AGREEMENT	
AUTOMATIC RENEWAL OF INSURANCES BOUND	
CANCELLATION AND TERMINATION	
EFFECT OF EXPIRY, CANCELLATION OR TERMINATION	
<b>DOCUMENTATION FOR INSURANCES BOUND</b>	
APPLICATIONS OR PROPOSAL FORMS	
DOCUMENTS ISSUED	
FORMAT AND APPROVAL OF CERTIFICATES	
WORDINGS, CONDITIONS, CLAUSES, ENDORSEMENTS, WARRANTIES AND EXCLUSIONS APPLICABLE TO INSURANCES BOUND	
JOINT CERTIFICATES	
SECURITY OF DOCUMENTS	

<b>SETTLEMENT OF CLAIMS FOR INSURANCES BOUND</b>	
PROCEDURE FOR THE HANDLING AND SETTLEMENT OF CLAIMS	
<b>ACCOUNTING AND COMMISSIONS</b>	
BORDEREAUX, ACCOUNTS AND SETTLEMENTS	
COMMISSION(S)	
REFUND OF UNEARNED COMMISSIONS	
<b>GENERAL REQUIREMENTS</b>	
INTERNET TRADING	
FEES AND CHARGES	
EXPENSES	
TAXES	
PREMIUM FINANCE CONTRACTS	
SEPARATE BANK ACCOUNTS	
RECORDS, STATISTICAL INFORMATION REQUIRED BY THE UNDERWRITERS	
ADVERTISING	
INDEMNITY INSURANCE	
<b>JURISDICTION AND DISPUTES</b>	
COMPLIANCE WITH THE LAW	
COMPLAINTS OR PROCEEDINGS	
JURISDICTION AND GOVERNING LAW	
ENFORCEABILITY CLAUSE	
SEVERAL LIABILITY	
GENERAL INTERPRETATION	
<b>ADDITIONAL PROVISIONS APPLICABLE TO THE UNITED KINGDOM</b>	
DATA PROTECTION ACT	
CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE	
<b>SCHEDULE</b>	

**NON-MARINE BINDING AUTHORITY AGREEMENT  
(EXCLUDING U.S.A. & CANADA DOMICILED COVERHOLDERS)**

This Binding Authority Agreement, the Schedule attached hereto and any endorsements hereon ('the Agreement') is made by and between the Underwriting Members of Lloyd's whose syndicate numbers and proportions are shown in the attached table ('the Underwriters'), and the Coverholder whose name and address is stated in the Schedule.

All communications between the Coverholder and the Underwriters shall be made via the Lloyd's Broker whose name and address is stated in the Schedule.

Whereas the Coverholder has sought authority to bind insurances on behalf of the Underwriters and has negotiated the grant of such authority through the Lloyd's Broker and has agreed to co-operate with and assist the Underwriters, their representatives and where appropriate the Lloyd's Broker in all matters pertaining to the Agreement, it is mutually understood and agreed between the Underwriters and the Coverholder as follows:

**FORMATION, SCOPE AND TERMINATION**

**SECTION 1**  
**EFFECTIVE DATE**

- 1.1 The Agreement shall take effect only when the Underwriters have acknowledged in writing receipt of a copy of the Agreement signed by the Coverholder;
- 1.2 Any amendment to the Agreement shall be evidenced in writing and endorsed hereon. All amendments shall be acknowledged in writing by the Coverholder;
- 1.3 Any renewal of the Agreement shall take effect only when the Underwriters have received from the Coverholder signed written acceptance of the terms of the renewal.

## ~~SECTION 2- PERIOD~~

~~Subject to Section 1, the Agreement is effective during the period stated in the Schedule unless cancelled or terminated in accordance with Sections 4.2 and 16.~~

## ~~SECTION 3- PERSONS RESPONSIBLE FOR OPERATION AND CONTROL~~

~~3.1 Notwithstanding 3.2 and 3.3, the person(s) named in 3.1 of the Schedule is(are) responsible for the overall operation and control of the Agreement;~~

~~3.2 The person(s) authorised to bind insurances is(are) named in 3.2 of the Schedule;~~

~~3.3 The person(s) with overall responsibility for the issuance of documents evidencing insurances bound is(are) named in 3.3 of the Schedule;~~

~~3.4 The person(s) authorised to exercise any claims authority granted by the Agreement is(are) named in 3.4 of the Schedule.~~

## ~~SECTION 4- GRANT OF AUTHORITY~~

~~4.1 The Underwriters hereby authorise the Coverholder to:~~

~~4.1.1 bind insurances and amendments thereto for the Underwriters' account;~~

~~4.1.2 act as the Underwriters' agent in accordance with Section 33 for the purpose of receiving premiums from insureds and settling refunds and to receive claims money prior to onward transmission to insureds;~~

~~4.2 The Coverholder shall comply with any direction, condition or requirement, including any direction to cancel or terminate the Agreement, given by Lloyd's to the Underwriters;~~

~~4.3 In respect of every insurance bound, the Coverholder has a duty to:~~

~~4.3.1 issue certificates of insurance, endorsements and such other documents evidencing cover as may be agreed in writing by the Underwriters;~~

~~4.3.2 collect and process premiums and return premiums on the Underwriters' behalf;~~

~~4.3.3 handle claims and/or settle claims if authorised;~~

~~4.4 The grant of authority under 4.1 and 4.3 shall be in accordance with the terms and conditions contained in the Agreement;~~

~~4.5 Nothing in the Agreement shall be construed as creating the relationship of employer and employee between the Underwriters and the Coverholder.~~

## ~~SECTION 5- DELEGATION OF AUTHORITY~~

~~5.1 The grant of authority to bind insurances and issue documents evidencing insurances bound shall not be delegated by the Coverholder to any other person, firm, company or any branch office;~~

~~5.2 If any authority(ies) or responsibility(ies) other than those described under 5.1 is(are) delegated to a third party(ies), any such delegation must be in writing and the Underwriters must be a party to the written contract of delegation to the third party(ies).~~

**~~SECTION 6-~~**  
**~~AUTHORISED CLASS(ES) OF BUSINESS AND COVERAGE(S)~~**

~~The Coverholder is authorised to bind insurances only of the class(es) and for the coverage(s) stated in the Schedule, subject to the exclusions stated in Section 7.~~

**~~SECTION 7-~~**  
**~~EXCLUDED CLASS(ES) OF BUSINESS AND COVERAGE(S)~~**

~~The following shall not be bound:~~

- ~~7.1 — war and civil war risks;~~
- ~~7.2 — nuclear risks;~~
- ~~7.3 — risks of financial guarantee, financial default, bankruptcy or insolvency;~~
- ~~7.4 — any other class(es) of business or coverage(s) as stated in the Schedule.~~

**~~SECTION 8-~~**  
**~~PERIOD OF INSURANCES BOUND~~**

- ~~8.1 — No insurance shall be bound for a period greater than that stated in the Schedule;~~
- ~~8.2 — Every insurance bound shall commence during the period of the Agreement;~~
- ~~8.3 — No insurance shall be bound further in advance of its inception date than the number of days stated in the Schedule;~~
- ~~8.4 — No insurance shall be bound which provides for automatic or tacit renewal, unless otherwise agreed by the Underwriters;~~
- ~~8.5 — Each insurance bound shall run to its contractual expiry date, unless cancelled or terminated in accordance with its individual cancellation or termination provisions;~~
- ~~8.6 — In the event of cancellation or termination of any insurance bound the Coverholder shall comply with any applicable law relating to the cancellation or termination of such insurance and to the return of premium, commission, fees, charges and taxes.~~

**~~SECTION 9-~~**  
**~~MAXIMUM LIMITS OF LIABILITY/SUMS INSURED~~**

~~The Coverholder is authorised to bind insurances only up to the limits of liability or sums insured stated in the Schedule.~~

**~~SECTION 10~~**  
**~~GROSS PREMIUM INCOME LIMIT~~**

- ~~10.1 — The Coverholder shall not bind total gross premium income in excess of the limit stated in the Schedule;~~
- ~~10.2 — The Coverholder shall monitor the total gross premium income bound and notify the Underwriters immediately if it becomes apparent that the total gross premium income is likely to exceed the percentage of the limit stated in the Schedule;~~
- ~~10.3 — For the purposes of this Section, gross premium income shall be defined as all premiums and additional premiums, less return premiums (before deductions of any commission and excluding any tax or policy or other charges).~~

**~~SECTION 11~~**  
**~~TERRITORIAL LIMITATIONS~~**

- ~~11.1 The Coverholder is authorised to bind insurances only for risks located in the territory(ies) stated in the Schedule;~~
- ~~11.2 The Coverholder is authorised to bind insurances only for insureds domiciled in the territory(ies) stated in the Schedule;~~
- ~~11.3 The territorial limits of each insurance bound shall not be greater than those stated in the Schedule.~~

**~~SECTION 12~~**  
**~~AGGREGATES~~**

- ~~12.1 The Coverholder shall record and monitor the aggregate exposures as defined in the Schedule;~~
- ~~12.2 The Coverholder shall advise the Underwriters of the aggregate exposures at the intervals stated in the Schedule;~~
- ~~12.3 The Coverholder shall not bind total aggregate limits in excess of the amounts stated in the Schedule.~~

**~~SECTION 13~~**  
**~~PREMIUMS, DEDUCTIBLES AND EXCESSES FOR INSURANCES BOUND~~**

- ~~13.1 All gross premiums for insurances bound shall be calculated as stated in the Schedule;~~
- ~~13.2 The Coverholder shall incorporate Deductibles and/or Excesses in insurances bound as stated in the Schedule.~~

**~~SECTION 14~~**  
**~~OTHER CONDITIONS AND/OR REQUIREMENTS RELATING TO THE OPERATION OF THE AGREEMENT~~**

- ~~14.1 The Coverholder shall comply with any conditions and/or requirements stated in the Schedule or endorsed hereon;~~
- ~~14.2 The Coverholder shall comply with any amendments to the Agreement as stated in the Schedule or endorsed hereon.~~

**~~SECTION 15~~**  
**~~AUTOMATIC RENEWAL OF INSURANCES BOUND~~**

- ~~15.1 The Coverholder shall maintain adequate records to identify and monitor, within any applicable time frames, all insurances bound which provide for or are subject to law granting automatic renewal or any extension of the period of any insurance bound;~~
- ~~15.2 The Coverholder shall review each insurance bound prior to its individual renewal date in order to offer renewal terms or to decline the renewal. This process shall be carried out in compliance with any applicable automatic renewal law;~~
- ~~15.3 The Coverholder is responsible for the necessary, timely and proper issuance of any notice of non-renewal for individual insurances bound to prevent their automatic renewal;~~
- ~~15.4 In the event of expiry, cancellation or termination of the Agreement, the Coverholder shall provide the Underwriters with details of the following as soon as possible:~~
- ~~15.4.1 all insurances in force at the date of expiry or the effective date of cancellation or termination of the Agreement, which are or may be subject to automatic renewal;~~

~~15.4.2 all insurances for which terms have been offered preceding the date of expiry or the effective date of cancellation or termination of the Agreement, which could be bound and may be subject to automatic renewal;~~

~~15.4.3 all insurances where automatic renewal cannot be or has not been prevented;~~

~~15.5 After the initial report by the Coverholder, the Coverholder shall continue to provide details of all such insurances on a monthly basis.~~

## ~~SECTION 16~~

### ~~CANCELLATION AND TERMINATION~~

~~16.1 Without prejudice to the terms of 16.2 and 16.3, the Agreement may be cancelled at any time by either party giving to the other not less than:~~

~~16.1.1 the number of days notice in writing as stated in the Schedule; or~~

~~16.1.2 the minimum notice period, if any, required by local law;~~

~~Any such notice will be effective from the date given, and the Agreement will terminate upon the expiration of the period of such notice;~~

~~16.2 Unless the Underwriters specifically agree to the contrary in writing, the Agreement will be automatically terminated in the event the Coverholder shall:~~

~~16.2.1 become the subject of voluntary or involuntary rehabilitation or liquidation proceedings;~~

~~16.2.2 become the subject of an action in bankruptcy;~~

~~16.2.3 make or propose any composition with its creditors or make any assignment for the benefit of its creditors or otherwise acknowledge its insolvency;~~

~~16.2.4 have imposed by a court of competent jurisdiction the appointment of an administrator or administrative receiver or equivalent office holder;~~

~~16.2.5 have a receiver or equivalent office holder appointed for the whole or any part of the Coverholder's business;~~

~~16.2.6 be merged with, acquired by or otherwise absorbed by any individual, corporation or other business entity or organisation of any kind;~~

~~16.2.7 being a partnership, be dissolved by agreement between the partners or by operation of law;~~

~~16.2.8 cease, for whatever reason, to be regulated by the Financial Services Authority or other regulatory body or have any relevant license or authority to conduct business suspended, removed or impaired by any order or decree of any judicial or regulatory authority;~~

~~16.3 The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 16.3.1 to 16.3.3 inclusive;~~

~~The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;~~

~~16.3.1 The Coverholder fails to comply with any of the provisions of the Agreement;~~

~~16.3.2 Any past or present director, officer, partner or employee of the Coverholder or any individual named in the Agreement is convicted of or charged with any criminal offence involving fraud or dishonesty or any other criminal offence that may materially affect the operation of the Agreement;~~



~~16.3.3 The Lloyd's Broker is suspended as a Lloyd's Broker or ceases to have permission to transact insurance business at Lloyd's as a Lloyd's Broker unless an alternative Lloyd's Broker is mutually agreed in writing by the Underwriters and the Coverholder;~~

~~16.4 The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1 and 16.3.2. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters' rights under 16.3;~~

~~The Underwriters shall advise the Coverholder immediately upon becoming aware of the occurrence of the events in 16.3.3;~~

~~16.5 The receiving party shall immediately acknowledge in writing receipt of any notice of cancellation or termination given by the other party. However, failure to acknowledge receipt of any notice will not prejudice the effect of the notice of cancellation or termination;~~

~~16.6 Notice of cancellation or termination shall be sent by prepaid registered post to the address(es) of the parties as stated in the Schedule. Proof of posting shall be sufficient proof of notice having been served.~~

## ~~SECTION 17~~

### ~~EFFECT OF EXPIRY, CANCELLATION OR TERMINATION~~

~~17.1 At any time during any period of notice of cancellation or termination of the Agreement, the Coverholder shall have no authority to extend insurances already bound without the prior written consent of the Underwriters;~~

~~17.2 With effect from the date of expiry, cancellation or termination of the Agreement:~~

~~17.2.1 except as stated in 17.3 below, the Coverholder shall have no authority to offer terms, bind insurances, renew, cancel, extend, amend or alter in any way insurances already bound without the prior written consent of the Underwriters. Such written consent shall only be effective where it is not in contravention of local law;~~

~~17.2.2 the Coverholder remains under a duty to perform its obligations in accordance with the terms and conditions of the Agreement until every insurance has expired or has otherwise been cancelled or terminated and, in respect of claims arising under such insurances, until all such claims have been paid or otherwise resolved unless otherwise instructed by the Underwriters;~~

~~17.2.3 the Coverholder shall deliver promptly to the Underwriters or their appointed representative all unused certificates of insurance, other documents and other unused materials which it possesses in connection with the Agreement and ensure that any electronic storage and/or production of such documents ceases;~~

~~17.2.4 the Underwriters' rights to receive monies due in respect of insurances bound shall not be affected and the Coverholder agrees not to challenge these rights provided always that, if the Underwriters at their written option collect monies from insurance brokers or other insurance intermediaries, insureds or others from whom monies may be due in respect of insurances bound, the Underwriters shall give the Coverholder credit for such sums;~~

~~17.3 With effect from the date of expiry of the Agreement, unless the Underwriters instruct the Coverholder otherwise, the Coverholder shall retain the authority under the Agreement to cancel, amend or alter insurances already bound until every such insurance has expired or has otherwise been cancelled or terminated and, in respect of claims arising under such insurances, until all such claims have been paid or otherwise resolved;~~

~~17.4 Where the Agreement has terminated pursuant to 16.2.8, and/or because the Coverholder otherwise ceases to have the required authorisation or right (or any relevant exemption therefrom), the Coverholder will not be under the duty referred to in 17.2.2 if its obligations under the Agreement would, if performed, cause it to be in breach of any applicable regulatory prohibition; in such circumstances the Coverholder shall be under a duty to cooperate with and~~

implement all reasonable instructions from the Underwriters to effect the transfer of servicing of the insurances bound by the Coverholder to such parties as the Underwriters may appoint.

## ~~DOCUMENTATION FOR INSURANCES BOUND~~

### ~~SECTION 18~~

#### ~~APPLICATIONS OR PROPOSAL FORMS~~

~~Any specific application or proposal form to be used by the Coverholder shall be agreed by the Underwriters prior to use and if appropriate identified in the Schedule.~~

### ~~SECTION 19~~

#### ~~DOCUMENTS ISSUED~~

~~19.1 The Coverholder shall issue a certificate in respect of every insurance bound and an endorsement in respect of every change made to each insurance bound:~~

~~19.1.1 Certificates issued shall be uniquely numbered and shall include the Agreement number stated in the Schedule;~~

~~19.1.2 Endorsements, if any, shall be uniquely and consecutively numbered for the certificate concerned;~~

~~19.2 Each certificate and endorsement issued shall bear the signature of one or more of the persons named in 3.1, 3.2 or 3.3 of the Schedule;~~

~~19.3 If required by local law or the insured requires that an insurance is evidenced by a policy instead of a certificate, the Coverholder shall request a policy and such policy shall be issued by the Underwriters and any certificate issued shall be void;~~

~~19.4 Immediately upon binding the Coverholder shall issue evidence of insurance to the insured or the insured's agent. Certificates and endorsements shall be issued as soon as practicable, but in any event, no later than 30 days after inception, or in accordance with local law;~~

~~19.5 The Coverholder shall retain a copy of all documents issued;~~

~~19.6 Unless otherwise stated in the Schedule or upon request, the Coverholder shall send a copy of all such documents issued to the Underwriters.~~

### ~~SECTION 20~~

#### ~~FORMAT AND APPROVAL OF CERTIFICATES~~

~~The format of any certificate or renewal certificate to be issued by the Coverholder shall be as stated in the Schedule and agreed by the Underwriters prior to use.~~

### ~~SECTION 21~~

#### ~~WORDINGS, CONDITIONS, CLAUSES, ENDORSEMENTS, WARRANTIES AND EXCLUSIONS APPLICABLE TO INSURANCES BOUND~~

~~21.1 All insurances bound shall be subject to the wordings, conditions, clauses, endorsements, warranties and exclusions as stated in the Schedule;~~

~~21.2 Each certificate must contain the full text of each wording, condition, clause, endorsement, warranty, exclusion and any other document(s) forming part of the individual contract of insurance. Furthermore all included wordings, conditions, clauses, endorsements, warranties, exclusions and other documents shall be identified and itemised in or upon the certificate;~~

~~21.3 Each certificate must identify the law and jurisdiction applicable to the contract of insurance, the period of insurance, the limits of liability or sums insured, the amount of the premium and any other applicable provisions that may be required under relevant local laws and regulations;~~

- ~~21.4 Each certificate shall contain a Several Liability Notice as stated in the Schedule;~~
- ~~21.5 Except where the binding or administration of the insurances is regulated by the Financial Services Authority:~~
- ~~21.5.1 Each certificate must contain a statement to the effect that all enquiries and disputes should be addressed to the Coverholder whose name and address must be clearly stated on the certificate;~~
- ~~21.6 Where the binding or administration of the insurances is regulated by the Financial Services Authority:~~
- ~~21.6.1 Each certificate shall show the name and address of the Coverholder and shall contain a statement that:~~
- ~~21.6.1.1 All claims and other enquiries shall be addressed to the entity whose name and address is stated in 21.6.1.1 of the Schedule;~~
- ~~21.6.1.2 All complaints must be referred in the first instance to the Coverholder and, if no satisfaction is obtained, complaints can be referred to the Complaints Department, Lloyd's at the address stated in 21.6.1.2 of the Schedule;~~
- ~~21.6.1.3 Where the Coverholder deals with the insured through a retail agent, in respect of any claims referred by the insured to the Coverholder, the Coverholder acts as agent for the Underwriters and not the insured;~~
- ~~21.6.1.4 Lloyd's is regulated by the Financial Services Authority ('the FSA') whose address is stated in 21.6.1.4 in the Schedule.~~

## ~~SECTION 22~~ ~~JOINT CERTIFICATES~~

- ~~22.1 No Joint Certificate shall be issued under the Agreement except in accordance with 22.3;~~
- ~~22.2 For the purposes of the Agreement 'Joint Certificate' is a certificate or other document evidencing insurance accepted under the Agreement and which also evidences a proportion of the insurance accepted for other Lloyd's Underwriters or for insurers which are not Underwriting Members of Lloyd's (hereinafter 'the other insurer(s)');~~
- ~~22.3 Joint Certificates may be issued provided the Underwriters have granted permission as indicated in the Schedule and that in each instance:~~
- ~~22.3.1 the Underwriters have established the identity of the other insurer(s) which is(are) named in the Schedule;~~
- ~~22.3.2 the Joint Certificate shall include all the details that are required to be included in insurance documentation evidencing contracts of insurance that are issued by an approved Coverholder under a registered binding authority or by a restricted Coverholder under a restricted binding authority;~~
- ~~22.3.3 the proportion or amount of risk accepted by the Underwriters is expressly stated on the Joint Certificate and is specified separately from the proportion or amount of risk accepted by the other insurer(s);~~
- ~~22.3.4 the Joint Certificate must contain the following statement, in lieu of the Several Liability Notice as stated in 21.4 of the Schedule:~~
- ~~———— '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 or amount of the risk shown against that insurer's name';~~

~~22.3.5 the issuance of Joint Certificates has been confirmed as an acceptable practice by the Lloyd's General Representative in the country or territory in which the Coverholder intends to issue the Joint Certificate or, in the absence of such a General Representative, by the Franchise Board of Lloyd's;~~

~~Nothing in this Section 22 shall permit a Joint Certificate to be issued in circumstances where that would contravene any relevant territorial general cover condition or would contravene any requirements of the jurisdiction in which the Coverholder is domiciled or any other jurisdiction in which the Coverholder trades, provides services or does business.~~

## ~~SECTION 23 SECURITY OF DOCUMENTS~~

~~All stocks of certificates of insurance, endorsements and other documents and any electronic method of storing and/or producing documentation shall be kept secure at all times. If requested by the Underwriters, the Coverholder shall promptly return or destroy all unused documents relating to the Agreement and ensure that any electronic storage and/or production of such documents ceases.~~

## ~~SETTLEMENT OF CLAIMS FOR INSURANCES BOUND~~

### ~~SECTION 24 PROCEDURE FOR THE HANDLING AND SETTLEMENT OF CLAIMS~~

~~The procedure for the handling and settlement of claims shall be as stated in the Schedule.~~

## ~~ACCOUNTING AND COMMISSIONS~~

### ~~SECTION 25 BORDEREAUX, ACCOUNTS AND SETTLEMENTS~~

~~25.1 All premiums, paid claims, outstanding claims and expenses relating to insurances bound shall be allocated and declared to the Agreement;~~

~~25.2 The Coverholder shall prepare premium bordereaux at the interval stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated;~~

~~25.3 If the Coverholder is responsible for the production of claims bordereaux as indicated in the Schedule, the Coverholder shall prepare claims bordereaux for paid claims and outstanding claims at the claims bordereaux interval stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated and all such claims have been paid or otherwise resolved;~~

~~25.4 The Coverholder shall produce premium bordereaux and, if due from the Coverholder, claims bordereaux in a format(s) agreed in advance by the Underwriters;~~

~~25.5 All bordereaux due from the Coverholder shall be sent to the Lloyd's Broker within the number of days of the end of such bordereaux interval(s), as stated in the Schedule. In the event of there being no activity during a particular bordereaux interval, the Coverholder shall advise the Lloyd's Broker accordingly within the number of days of the end of such bordereaux interval(s) as stated in the Schedule;~~

~~25.6 If the Coverholder is responsible for the production of claims bordereaux, the Coverholder shall also produce and render to the Lloyd's Broker a summary account showing:~~

~~25.6.1 the premium declared on the bordereaux, gross and net of commission, taxes and any other deductions;~~

~~25.6.2 the amount declared on the paid claims bordereaux;~~

~~25.7 Settlements shall be remitted via the Lloyd's Broker within the maximum number of days of the end of each such bordereaux interval(s) as stated in the Schedule;~~

~~25.8 — Any fees or charges that are agreed to be reimbursed by the Underwriters to the Coverholder as a deduction from the premium shall be deducted from the premium bordereaux. Such deductions are as stated in the Schedule.~~

#### ~~SECTION 26 COMMISSION(S)~~

~~26.1 — The Coverholder's Commission shall be as stated in the Schedule;~~

~~26.2 — Contingent or Profit Commission shall be as stated in the Schedule.~~

#### ~~SECTION 27 REFUND OF UNEARNED COMMISSIONS~~

~~The Coverholder shall refund to the Underwriters commissions on all cancelled insurances and return premiums, at the same rates at which such commissions were originally allowed to the Coverholder.~~

### ~~GENERAL REQUIREMENTS~~

#### ~~SECTION 28 INTERNET TRADING~~

~~28.1 — The Coverholder shall not offer, negotiate, accept, decline, process or otherwise transact insurances to be bound via any internet site, portal or similar system except as may be agreed by the Underwriters;~~

~~28.2 — The Coverholder shall provide, without any restriction or limitation, the Underwriters or their representatives with any details or information pertaining to such systems which the Underwriters or their representatives may at any time request. The Coverholder shall allow the Underwriters or their representatives to inspect such systems at any time;~~

~~28.3 — The Underwriters have the right to require the Coverholder to cease offering, negotiating, accepting, declining, processing or otherwise transacting insurances to be bound via such systems in whole or in part.~~

#### ~~SECTION 29 FEES AND CHARGES~~

~~Policy, service and other fees and charges applied by the Coverholder must not breach any local law(s) or regulatory practice(s) which may be in force at the time. All such policy, service and other fees and charges must be shown separately and not concealed from the insured or the Underwriters.~~

#### ~~SECTION 30 EXPENSES~~

~~The Coverholder shall bear and pay all charges and expenses incurred by the Coverholder in the operation of the Agreement except as agreed under 25.8.~~

#### ~~SECTION 31 TAXES~~

~~31.1 — It is the responsibility of the Coverholder:~~

~~31.1.1 — to ensure the collection and forwarding to the Underwriters of any tax(es) due from insureds and disbursement of any refunds of such tax(es) due to insureds; and~~

~~31.1.2 — where required by local law, to collect tax(es) due from insureds and pay tax(es) to the appropriate authorities and to make any necessary returns and to ensure any disbursements of refunds of such taxes are made to insureds;~~

~~31.2 — All tax(es) must be shown separately on the certificate issued to the insured and not concealed from the insured or the Underwriters;~~

~~31.3 All records in respect of tax(es) must be maintained for a minimum period of 7 years or in accordance with local law if greater;~~

~~31.4 The Coverholder shall immediately notify the Underwriters of any tax inspection or audit in relation to the Agreement or any insurance bound under the Agreement and of the results of such inspection or audit.~~

## ~~SECTION 32~~

### ~~PREMIUM FINANCE CONTRACTS~~

~~32.1 The Coverholder shall not enter into or permit others to enter into premium finance arrangements in the name of and on behalf of the Underwriters;~~

~~32.2 If the Coverholder or any other party enter(s) into a premium finance arrangement in respect of premium(s) for insurance(s) bound, the arrangement(s) shall be solely in the name and entirely for the account of the Coverholder or such other party and the Underwriters will not accept responsibility for any such arrangement(s).~~

## ~~SECTION 33~~

### ~~SEPARATE BANK ACCOUNTS~~

~~All monies received by the Coverholder, from or on behalf of the Underwriters, shall be received by the Coverholder in a fiduciary capacity on behalf of the Underwriters and shall be:~~

~~33.1 deposited immediately into an account separate from the Coverholder's general or operating account for onward transmission for the purposes set out in 33.3 and shall not be otherwise held or retained;~~

~~33.2 identified in the Coverholder's book of account, separately from other funds similarly held by the Coverholder for other insurers;~~

~~33.3 used solely for the purpose of settling accounts with the Underwriters or the payment of the commissions, premium refunds, claims or any other transaction authorised by the Underwriters.~~

## ~~SECTION 34~~

### ~~RECORDS AND STATISTICAL INFORMATION REQUIRED BY THE UNDERWRITERS~~

~~34.1 The Coverholder shall establish and maintain complete records relating to all insurances bound. Such records shall be and shall remain the property of the Underwriters;~~

~~34.2 The Coverholder shall prepare statistical information as stated in the Schedule at the interval(s) stated in the Schedule until every insurance bound has expired or has otherwise been cancelled or terminated. The Coverholder shall send such information to the Lloyd's Broker within the maximum number of days of the end of each interval as stated in the Schedule;~~

~~34.3 The Underwriters or their representatives shall have the right at any time, without any restriction or limitation, to inspect and audit any records and statistical information of the Coverholder relating to insurances bound and to the operation of the Agreement and shall have the right to make copies or extracts of any such records;~~

~~34.4 If the Agreement is a restricted binding authority, as defined in the Lloyd's Delegated Underwriting Byelaw (No. 1 of 2004), the Coverholder agrees to permit access to Lloyd's, at any time during usual business hours and on reasonable notice, to inspect and audit any records, statistical information, accounts and business processes relating to the operation of the Agreement;~~

~~34.5 The Underwriters reserve the right for themselves or their representatives to access the premises of the Coverholder at any time for the purpose of carrying out any inspection or audit;~~

~~34.6 The Coverholder shall retain all records relating to all insurances bound for a minimum of 7 years or for such longer period as may be required by local law.~~

#### ~~SECTION 35 ADVERTISING~~

~~35.1 The Coverholder may only refer (or permit any other party to refer) to Lloyd's in any publicity, letterheads, directories or advertising material, whether in print, electronic or any other form or media, in accordance with the rules and guidelines issued by Lloyd's and with the agreement of the Underwriters and subject to all local insurance regulatory requirements. Details of the current rules and guidelines are available to the Coverholder from the Lloyd's Broker or from Lloyd's;~~

~~35.2 The Coverholder must agree with the Underwriters any specific marketing material to be used in relation to the insurances to be bound.~~

#### ~~SECTION 36 INDEMNITY INSURANCE~~

~~36.1 The Coverholder shall maintain, for the duration of the Agreement, indemnity insurance acceptable to the Underwriters providing coverage in connection with the operation of the Agreement for any liability arising out of negligent acts, errors or omissions by the Coverholder including any past or present director, officer, partner or employee of the Coverholder;~~

~~36.2 The Coverholder shall provide the Underwriters or their representatives with evidence acceptable to the Underwriters confirming such insurance if requested;~~

~~36.3 The Coverholder shall inform the Underwriters of any changes to the indemnity insurances providing coverage in connection with the operation of the Agreement.~~

#### ~~JURISDICTION AND DISPUTES~~

##### ~~SECTION 37 COMPLIANCE WITH THE LAW~~

~~Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.~~

##### ~~SECTION 38 COMPLAINTS OR PROCEEDINGS~~

~~The Coverholder shall notify the Underwriters immediately upon becoming aware of any matter arising out of the operation of or in connection with the Agreement which has resulted or could result in a complaint to any regulatory authority or gives rise to litigation or proceedings against the Underwriters, the Coverholder or the Lloyd's Broker.~~

##### ~~SECTION 39 JURISDICTION AND GOVERNING LAW~~

~~The Agreement is subject to English law and practice and to the exclusive jurisdiction of the English courts.~~

##### ~~SECTION 40 ENFORCEABILITY CLAUSE~~

~~In the event any portion of the Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.~~

**~~SECTION 41~~**  
**~~SEVERAL LIABILITY~~**

~~The liability of the Underwriters is several and not joint and is limited solely to the extent of their individual proportions as shown in the attached table. The Underwriters are not responsible for the subscription of any co-subscribing underwriter or any other insurer or co-insurer who for any reason does not satisfy all or part of its obligations.~~

**~~SECTION 42~~**  
**~~GENERAL INTERPRETATION~~**

~~In the Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement. References to "law" include references to any applicable, common or customary law and any treaty, constitution, statute, legislation, decree, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.~~

**~~ADDITIONAL PROVISIONS APPLICABLE TO THE UNITED KINGDOM~~**

~~Sections 43 and 44 are part of the Agreement if and only if the Coverholder is transacting business in the United Kingdom.~~

**~~SECTION 43~~**  
**~~DATA PROTECTION ACT~~**

~~The Coverholder shall comply with its obligations under the Data Protection Act 1998, whether as a data controller or data processor (as appropriate), and if the former, the Coverholder shall ensure that it is included in the register maintained by the Information Commissioner.~~

~~The Coverholder shall process data regarding insureds and prospective insureds in accordance with the Data Protection Principles (including, where the Coverholder is acting as data processor, the Seventh Data Protection Principle) and for the purposes only of providing insurance to insureds and prospective insureds and of handling claims to the extent allowed by the Agreement.~~

**~~SECTION 44~~**  
**~~CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE~~**

~~A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.~~

**LMA3019 (Broker)**  
**(20/07/2006)**

Form approved by Lloyd's Market Association

**SCHEDULE**

~~This Schedule forms part of and incorporates by reference LMA3019 (the 'Agreement'), which Agreement is identified by the Agreement Number and Unique Market Reference Number stated below. For the purposes of interpretation, the contents of this Schedule shall have meaning only as provided for in the Agreement.~~

**Agreement Number:** ~~FB221/12~~

**Unique Market**

**Reference Number:** ~~B0509QF067412 in respect of Lloyd's underwriters~~  
~~B0397QF067412 in respect of non-Lloyd's market~~



**The Coverholder:** ~~Capita Commercial Insurance Services Limited~~

**Address:** ~~40 Dukes Place  
London EC3A 7NH~~

**The Broker:** ~~Lloyd's Broker~~ ~~Non Lloyd's Broker~~

~~Marsh Ltd~~ ~~Capita Commercial Insurance Services Limited~~

**Address:** ~~Tower Place~~ ~~40 Dukes Place~~  
~~London~~ ~~London~~  
~~EC3R 5BU~~ ~~EC3A 7NH~~

**AGREEMENT**

**SECTION NUMBER NARRATIVE**

**Section 2** ~~PERIOD:~~

~~From: 00.00hrs local standard time 1<sup>st</sup> October 2012 at the  
address above~~

~~To: 24.00 hrs local standard time 30<sup>th</sup> September 2013 at the  
above address~~

**Sub-section 3.1** ~~THE PERSON(S) RESPONSIBLE FOR THE OVERALL OPERATION AND CONTROL:~~

~~Paul Harbison / Tracey Garrett~~

**Sub-section 3.2** ~~THE PERSON(S) AUTHORISED TO BIND INSURANCES:~~

~~Tracey Garrett / Jo Goodman~~

**Sub-section 3.3** ~~THE PERSON(S) WITH OVERALL RESPONSIBILITY FOR THE ISSUANCE OF  
DOCUMENTS EVIDENCING INSURANCES BOUND:~~

~~Paul Harbison~~

~~Jo Goodman~~

~~Tracey Garrett~~

**Sub-section 3.4** ~~THE PERSON(S) AUTHORISED TO EXERCISE ANY CLAIMS AUTHORITY:~~

~~In accordance with the terms of the Qualifying Insurer's Agreement (QIA)  
including Schedule 1, the Assigned Risks Pool:-~~

~~Paul Harbison~~

~~Tracey Garrett~~

**Section 6** ~~AUTHORISED CLASS(ES) OF BUSINESS AND COVERAGE(S):~~

~~Solicitors Indemnity Insurance~~

~~(Subject to the terms, conditions, exclusions and limitations of the  
Agreement)~~

**Sub-section 7.5** ~~OTHER EXCLUDED CLASS(ES) OF BUSINESS OR COVERAGE(S):~~

~~None~~

~~Sub-section 8.1 PERIOD OF INSURANCES BOUND: 6 months~~  
~~MAXIMUM PERIOD OF INSURANCES BOUND: 24 months~~  
~~including odd time~~  
~~subject to terms of~~  
~~Schedule 1 to the~~  
~~QIA and the Rules~~

~~Sub-section 8.3 MAXIMUM ADVANCE PERIOD FOR INCEPTION DATES: 30 days~~

~~Section 9 MAXIMUM LIMITS OF LIABILITY/SUMS INSURED:~~

~~The Coverholder is authorised to bind insurances in respect of ARP Policies (as defined in the QIA) up to the following limits of liability or sums insured which shall not be exceeded in any circumstances:~~

~~GBP2,000,000 any one claim plus defence costs~~

~~GBP3,000,000 any one claim plus defence costs in respect of Relevant Recognised Bodies~~

~~Sub-section 10.1 GROSS PREMIUM INCOME LIMIT: GBP20,000,000 in respect of ARP Policies~~

~~Sub-section 10.2 NOTIFIABLE PERCENTAGE OF THE LIMIT NOT TO EXCEED: 75%~~

~~Sub-section 11.1 RISKS LOCATED IN: England and Wales~~

~~Sub-section 11.2 INSUREDS DOMICILED IN: England and Wales~~

~~Sub-section 11.3 TERRITORIAL LIMITS: Worldwide~~

~~Sub-section 12.1 BASIS OF MONITORING~~

~~AGGREGATE EXPOSURES: None~~

~~Sub-section 12.2 REPORTING INTERVALS: Not applicable~~

~~Sub-section 12.3 MAXIMUM TOTAL AGGREGATE~~

~~LIMIT(S): Not applicable~~

~~Sub-section 13.1 BASIS FOR THE CALCULATION OF GROSS PREMIUMS:~~

~~All premiums for insurances bound in respect of ARP Policies under the Agreement shall be calculated (incorporating any applicable Deductibles and/or Excesses as shown in 13.2) as follows;~~

~~In accordance with Appendix 2, Rating Schedule for 2012/2013. of Schedule 3, Solicitors' Indemnity Insurance Rules 2012, of the QIA plus UK insurance premium tax at the applicable rate in respect of UK insureds.~~

~~Sub-section 13.2 DEDUCTIBLES AND/OR EXCESSES:~~

~~In accordance with Appendix 2, Rating Schedule for 2012/2013. of Schedule 3, Solicitors' Indemnity Insurance Rules 2012, of the QIA.~~

~~Sub-section 14.1 — OTHER CONDITIONS AND /OR REQUIREMENTS RELATING TO THE OPERATION OF THE AGREEMENT:~~~~This is a restricted binding authority as defined in the Delegated Underwriting Byelaw.~~~~The Coverholder shall produce to the Franchise Board any information, documents, books, records and other materials which, in the opinion of the Franchise Board relate or purport to relate to the operation of this restricted binding authority and give to the Franchise Board or its agent or general representative all reasonable facilities in its premises for the purpose of examining such materials.~~~~Accounts shall be remitted within 90 days of the end of each bordereaux period however, in accordance with the terms of the QIA, no premium will fall due for settlement until 3 months and 20 business days after the end of the indemnity period as defined in the QIA. In the event that the separate account held by the Coverholder to keep all premiums does not at any time contain sufficient funds to pay the claims costs, expenses, charges and other deductions permitted under the terms of the QIA, the Coverholder will prepare a bordereau of such items for immediate settlement by Underwriters.~~

LMA5097 Binding Authority Combined Certificates Endorsement as attached

~~Sub-section 14.2 — AMENDMENTS~~~~The following sections of LMA 3019 (the "Agreement"), of which this Schedule forms a part, shall be amended by the amendment or substitution set out below:~~~~Within the preamble to the binding authority the definition of 'the Underwriters' is amended to read 'the Underwriting Members of Lloyd's whose syndicate numbers and proportions are shown in the attached table and the Insurance Companies whose names and proportions are shown in the attached table'~~~~SECTION 4 GRANT OF AUTHORITY is amended as follows:~~~~The following words are added to the end of 4.3 "in accordance with the terms of the QIA and the Assigned Risks Pool Management Agreement ("ARPMA") and this agreement. In the event of any conflict between the terms of the QIA, the ARPMA and this agreement the QIA shall prevail over the other agreements."~~~~SECTION 16 — CANCELLATION AND TERMINATION is amended to read as follows:~~~~16.1 The Agreement may only be cancelled or terminated as detailed in the QIA. It is noted that the Agreement may only be cancelled by the Underwriters by notice in writing to the Coverholder to take effect at the end of an Indemnity Period (as defined in the QIA), but termination does not prevent the Coverholder from retrospectively binding cover for firms in default.~~~~16.2 Notice of cancellation or termination shall be sent by prepaid registered post to the address(es) of the parties as stated in the Schedule. Proof of posting shall be sufficient proof of notice having been served.~~~~Section 19 — DOCUMENTS ISSUED~~

~~Section 19.1.1 is amended to read as follows:~~

~~Certificates issued shall be uniquely numbered~~

~~Section 19.4 is amended to read as follows:~~

~~Immediately upon binding, the Coverholder shall confirm cover to the insured or the insured's agent. Certificates and endorsements shall be issued to Insured's within 10 business days following the determination of the ARP percentage participation of each insurer.~~

~~Section 21 – Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to Insurances Bound~~

~~Section 21.6.1.2 is amended to read as follows "All complaints must be referred in the first instance to the Coverholder and, if not satisfaction is obtained, complaints can be referred to: Policyholder & Market Assistance, Lloyd's Market Services, One Lime Street, London, EC3M 7HA and/or the complaints managers at your participating insurers as applicable.~~

~~Section 21.6.1.4 is amended to read as follows "U.K. Underwriters are regulated by the Financial Services Authority ('the FSA') whose address is stated in 21.6.1.4.in the Schedule~~

#### ~~Section 30 EXPENSES~~

~~The following words are added to the beginning of this clause "Except as contained in the QIA"~~

#### ~~Section 32 – PREMIUM FINANCE CONTRACTS~~

~~This section is deleted in its entirety.~~

~~**Sub-section 16.1.1** – **NUMBER OF DAYS NOTICE OF CANCELLATION:** – Not applicable~~

~~**Section 18** – **APPLICATIONS OR PROPOSAL FORMS:** As notified by the Coverholder from time to time~~

~~**Sub-section 19.6** – **VARIATIONS TO THE STATED PROCEDURE IN RELATION TO COPY DOCUMENTS:**  
Copy certificates to be supplied to Underwriters only on request~~

~~**Section 20** – **FORMAT OF CERTIFICATES:**  
As per Schedule A attached.~~

~~**Sub-section 21.1** – **WORDINGS, CONDITIONS, CLAUSES, ENDORSEMENTS, WARRANTIES AND EXCLUSIONS APPLICABLE TO INSURANCES BOUND:**~~

~~The wording for cover is the attached Contract of Assigned Risks Pool Insurance (per Appendix 1 of Schedule 2 to the QIA); and~~

~~The following additional conditions, clauses, warranties and exclusions shall attach and apply to every insurance bound hereunder:-~~

~~LSW1002 E.U. Disclosure Clause as applicable.~~

~~Sub-Section 21.4 SEVERAL LIABILITY NOTICE:~~

~~**PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY**~~

~~The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.~~

~~The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.~~

~~In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.~~

~~Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.~~

~~07/03/08  
LMA5096 (Combined Certificate)~~

~~Sub-sections 21.6.1.1 to 21.6.1.4 only apply where the binding or administration of the insurances is regulated by the FSA:~~

~~**Sub-section 21.6.1.1 THE NAME AND ADDRESS TO WHOM THE INSURED SHOULD DIRECT ALL CLAIMS AND OTHER ENQUIRIES:**~~

~~Tracey Garrett, Capita Commercial Insurance Services Limited, 40 Dukes Place, London EC3A 7NH~~

~~**Sub-section 21.6.1.2 THE ADDRESS OF THE COMPLAINTS DEPARTMENT, LLOYD'S:**~~

~~Policyholder & Market Assistance,  
Lloyd's Market Services,  
One Lime Street, London,  
EC3M 7HA~~

~~**Sub-section 21.6.1.4 THE ADDRESS OF THE FSA:**~~

~~25 The North Colonnade~~

~~Canary Wharf  
E14 5HS~~

~~**Section 22.3** JOINT CERTIFICATES:~~

~~other Lloyd's Underwriters Permitted/Not Permitted~~

~~non Underwriting Members of Lloyd's Permitted/Not Permitted~~

~~(and subject always to the provisions of Section 22)~~

~~**Section 22.3.1** IDENTITY OF OTHER INSURERS: All signatories to the QIA being certain Underwriters at Lloyd's of London and various non Lloyd's insurers~~

~~**Section 24** PROCEDURE FOR THE HANDLING AND SETTLEMENT OF CLAIMS: In accordance with the terms of the QIA, including Schedule 1, The Assigned Risks Pool~~

~~**Sub-section 25.2** PREMIUM BORDEREAUX INTERVAL: Quarterly in respect of ARP Policies~~

~~**Sub-section 25.3** CLAIMS BORDEREAUX (PAID AND OUTSTANDING) TO BE PRODUCED BY THE COVERHOLDER: Yes~~

~~CLAIMS BORDEREAUX INTERVAL: Quarterly in respect of ARP Policies~~

~~**Sub-section 25.5** MAXIMUM PERIOD FOR SUBMISSION OF BORDEREAUX: 30 days in respect of ARP Policies~~

~~**Sub-section 25.7** MAXIMUM PERIOD FOR REMITTANCE OF SETTLEMENTS: 90 days in respect of ARP Policies~~

~~**Sub-section 25.8** FEES AND CHARGES TO BE DEDUCTED BY THE COVERHOLDER: As contained in the QIA~~

~~**Sub-section 26.1** THE COVERHOLDER'S COMMISSION: Not applicable~~

~~**Sub-section 26.2** CONTINGENT OR PROFIT COMMISSION: Not applicable~~

~~**Sub-Section 34.2** STATISTICAL INFORMATION REQUIRED BY THE UNDERWRITERS:~~

~~REPORTING INTERVAL(S): Not applicable~~

~~MAXIMUM NUMBER OF DAYS: Not applicable~~

**~~BINDING AUTHORITY COMBINED CERTIFICATES ENDORSEMENT~~**  
**~~(For use in conjunction with LMA Binding Authority Agreements)~~**

~~Notwithstanding any reference to Joint Certificates in the Agreement/Schedule and/or (where applicable) U.S. General Cover Conditions the following provisions apply with respect to the issuance of Joint Certificates:~~

~~A. 'Joint Certificate' is amended to read 'Combined Certificate' in the Binding Authority Agreement to which this endorsement is attached.~~

~~B. COMBINED CERTIFICATES:~~

~~other Lloyd's Underwriters — \*Permitted / Not permitted  
non-Underwriting Members of Lloyd's — \*Permitted / Not permitted  
\*(Delete as applicable)~~

~~IDENTITY OF OTHER INSURERS:~~

~~All signatories to the QIA being certain Underwriters at Lloyd's of London and various non-Lloyd's insurers~~

~~C. For the purposes of the Agreement 'Combined Certificate' is a certificate or other document evidencing insurance accepted under the Agreement and which also evidences a proportion of the insurance accepted for other Lloyd's Underwriters or for insurers which are not Underwriting Members of Lloyd's (hereinafter 'the other insurer(s)');~~

~~D. Combined Certificates may be issued under the Agreement, as indicated in B above, provided that in each instance:~~

~~D.1 the Underwriters have established the identity of the other insurer(s) which is(are) named in B above;~~

~~D.2 the Combined Certificate shall include all the details that are required to be included in insurance documentation evidencing contracts of insurance that are issued by an approved Coverholder under a registered binding authority or by a restricted Coverholder under a restricted binding authority;~~

~~D.3 the proportion or amount of risk accepted by the Underwriters is expressly stated on the Combined Certificate and is specified separately from the proportion or amount of risk accepted by the other insurer(s);~~

~~D.4 the Combined Certificate must contain the following statement:~~

~~PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY~~

~~The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.~~

~~The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.~~

~~In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.~~

~~Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.~~

07/03/08  
LMA5097



**FINANCIAL CRIME ENDORSEMENT (Broker)****(For attachment to LMA 3018, LMA 3019, LMA3020 & LMA3024)**

~~By this endorsement the Binding Authority Agreement is amended as follows—~~

~~1. — By making the following amendments in SECTION 16 (Cancellation and Termination)~~

~~1.1 — to insert new paragraph 16.3.4:~~

~~“The Coverholder fails to comply with any relevant law or regulation in the jurisdiction in which it is located or in any other jurisdiction in which the Coverholder does business or otherwise fails to comply with the requirements of Section 37 of this Agreement.”~~

~~1.2 — to amend existing paragraph 16.3 as follows:~~

~~“The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 16.3.1 to 16.3.4 inclusive;~~

~~The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;”~~

~~1.3 — to replace existing sub-paragraph 16.3.2 as follows:~~

~~“The Coverholder or any past or present director, officer, partner or any individual named in the Agreement:-~~

~~16.3.2.1 is convicted of a criminal offence or where such a person had been convicted of a criminal offence prior to the commencement of this Agreement which had not been disclosed to the Underwriters. For the purposes of this 16.3.2.1 only the criminal offence shall be one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of this Agreement;~~

~~16.3.2.2 causes Underwriters to be subject to any criminal sanction;”~~

~~1.4 — to amend existing paragraph 16.4 as follows:~~

~~“The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1, 16.3.2 and 16.3.4. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters’ rights under 16.3;”~~

By replacing existing SECTION 37 with the following:

## **SECTION 37**

### **COMPLIANCE WITH THE LAW AND FINANCIAL CRIME**

- ~~37.1 Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper solicitation and handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.~~
- ~~37.2 The Coverholder shall not undertake any activity in any way that would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose Underwriters to any criminal sanction.~~
- ~~37.3 The Coverholder shall conduct its business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation. In addition, the Coverholder will not act contrary to any additional anti-money laundering or international economic or financial sanctions requirements by the Underwriters and/or Lloyd's other than where compliance with those requirements would be contrary to local law.~~
- ~~37.4 The Coverholder, on behalf of the Underwriters, shall not provide cover or pay any claim or provide benefit hereafter to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Coverholder and/or the Underwriters to any sanction, prohibition or restriction under any applicable international economic or financial sanctions legislation.~~
- ~~37.5 The Coverholder shall not accept, offer or facilitate payment, consideration, or any other benefit, which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery legislation.~~
- ~~37.6 The Coverholder shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of this Section 37.~~

LMA5173 (Broker)

10 August 2011

**Agreement Number:** FB221/12

**Unique Market Reference Number:** B0509QF067412 in respect of Lloyd's underwriters

**Reference Number:** B0397QF067412 in respect of non-Lloyd's market

**SIGNATURE OF THE COVERHOLDER**

~~In accordance with Section 1 of LMA3019, the Agreement is signed on behalf of the Coverholder as acceptance of the terms and conditions of the Agreement inclusive of any attachments identified in the Schedule.~~

~~Signed and accepted on behalf of the Coverholder~~

~~Name and Position of Signatory~~

~~Date of Signature~~

**ACKNOWLEDGEMENT OF THE UNDERWRITERS**

~~Signed and accepted on behalf of the Underwriters~~

~~Date of acknowledgement~~

LMA3019 (Broker)

(20/07/06)

**NON-SCHEDULE AGREEMENTS**

**~~TAXES PAYABLE BY THE  
INSURED AND  
ADMINISTERED BY THE  
INSURER(S):~~**

~~Premium declarations qualifying for UK Insurance Tax (IPT) must be charged at a rate of 6% or as advised by HM Customs and Excise.~~

**~~RECORDING TRANSMITTING  
AND STORING INFORMATION:~~**

~~Where the Broker maintains risk and claim data/information/documents the Broker will hold data/information/documents electronically.~~

~~The Broker will be responsible for maintaining slips and Claims files as Regulations demand.~~

INFORMATION

Not applicable

SECURITY DETAILS

~~ORDER HEREON: 100% of 100%~~

~~BASIS OF WRITTEN LINES: Percentage of whole~~

~~SIGNING PROVISIONS: In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (Re)insurers.~~

~~However:~~

- ~~(a) in the event that the placement of the order is not completed by the commencement date of the period of the Binding Authority then all lines written by that date will be signed in full;~~
- ~~(a) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of the Binding Authority, by the documented agreement of the Coverholder and all (Re)insurers whose lines are to be varied. The variation to the Binding Authority will take effect only when all such (Re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.~~

~~CONTRACT ADMINISTRATION~~  
~~AND~~  
~~ADVISORY~~  
~~DETAILS~~

SUBSCRIPTION AGREEMENT

<del>SLIP LEADER:</del>	
<del>SETTLEMENT TERMS:</del>	<del>90 days from end of bordereau period.</del>
<del>BASIS OF AGREEMENT TO _____ BINDING AUTHORITY CHANGES:</del>	<del>Any amendments to Binding Authority agreement to be agreed by Slip Leader and Bureau Leader (if applicable) only unless otherwise stated on such amendment.</del>
<del>BINDING AUTHORITY ADMINISTRATION:</del>	<del>Marsh Limited to administer Binding authority in respect of Lloyd's Underwriters.</del>
	<del>Capita Commercial Insurance Services Limited to administer Binding authority in respect of Non-Lloyd's insurers</del>
<del>BINDING AUTHORITY AGREEMENT PRODUCTION:</del>	<del>Binding authority wording to be produced by Lloyd's Broker and submitted to XIS for signature in respect of Lloyd's Underwriters.</del>
<del>BASIS OF CLAIMS AGREEMENT:</del>	<del>In accordance with the attached Qualifying Insurer's Agreement</del>
<del>CLAIMS AGREEMENT PARTIES:</del>	<del>In accordance with the attached Qualifying Insurer's Agreement</del>
<del>RULES AND EXTENT OF ANY OTHER DELEGATED CLAIMS AUTHORITY:</del>	<del>In accordance with the attached Qualifying Insurer's Agreement</del>
<del>EXPERT(S) FEES COLLECTION:</del>	<del>In accordance with the attached Qualifying Insurer's Agreement</del>
<del>BUREAU(X) ARRANGEMENTS:</del>	<del>XIS agrees to take down and advise premium and related entries appertaining to a single year of account and for this purpose a for declaration only signing number and date may be issued by XIS to establish such year of account.</del>
	<del>It is understood and agreed that U.K. Insurance Premium Tax will be signed without the requirement to sign the appropriate premium</del>
<del>SPECIAL</del>	<del>None</del>



**ARRANGEMENTS:**

**FISCAL AND REGULATORY**

**TAX PAYABLE BY  
INSURER(S):** \_\_\_\_\_ Not applicable

**BINDING AUTHORITY  
REGISTRATION DATE  
AND NUMBER :** \_\_\_\_\_ Not applicable (Restricted Binding authority)

**ALLOCATION OF PREMIUM  
TO CODING:** \_\_\_\_\_ E3

**FSA CLIENT  
CLASSIFICATION:** \_\_\_\_\_ Commercial.

**BROKER REMUNERATION & DEDUCTIONS**

**TOTAL BROKERAGE:** \_\_\_\_\_ Not applicable

**OTHER DEDUCTIONS  
FROM PREMIUM:** \_\_\_\_\_ Not applicable

**APPENDIX A**

**Certificate of Insurance**

**INDEMNITY YEAR 2012/2013**

**SOLICITORS' COMPULSORY  
PROFESSIONAL INDEMNITY INSURANCE**

~~THIS IS TO CERTIFY that in accordance with the authorization granted under Contract No: FB2212/QF067412 to the undersigned by certain Underwriters at Lloyd's, whose names and the proportions underwritten by them, which will be supplied on application, can be~~

~~ascertained by reference to the said Contract which bears the Seal of Lloyd's Policy Signing Office, and under Contract No:..... By certain Insurance Companies whose names and the proportions underwritten by them are stated herein (being hereinafter called "Insurers") and in consideration of the premium specified herein, the said Underwriters are hereby bound each for his own part and not one for another, their executors and administrators, and Insurers are bound each for his own part and not for another to insure (as follows:)(in accordance with the terms and conditions contained herein or endorsed hereon)~~

		_____ %
		<b>Underwritten</b>
<b>NAME OF QUALIFYING INSURER(S)</b>	÷	Insurers subscribing to the Assigned Risks Pool for the 2012/13 Indemnity year _____ 100%
<b>NAME OF INSURED FIRM OF SOLICITORS</b>	÷	
<b>PRINCIPAL ADDRESS OF FIRM</b>	÷	
<b>PERIOD OF INSURANCE</b>	÷	_____ To _____ (both days inclusive)
<b>POLICY NUMBER OR INSURER REFERENCE</b>	÷	
<b>PREMIUM DUE</b>	÷	<b>PREMIUM</b> _____ <b>RUN-OFF PREMIUM</b> _____
<b>INSURANCE PREMIUM TAX@ 6%</b>	÷	£ _____ £
<b>TERMS &amp; CONDITIONS</b>	÷	AS PER POLICY ATTACHED

~~The following additional conditions, clauses, warranties and exclusions shall attach and apply to every insurance bound:-~~

~~The parties are free to choose the law applicable to this Insurance Contract.~~

~~Unless specifically agreed to the contrary this insurance shall be subject to English Law.~~

~~Where the Coverholder deals with the insured through a retail agent, in respect of any claims referred by the insured to the Coverholder, the Coverholder acts as agent for the Underwriters and not the insured.~~

### **SEVERAL LIABILITY CLAUSE**

#### **PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY**

~~The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.~~

~~The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.~~

~~In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total~~

~~itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address. Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.~~

~~07/03/08~~

~~LMA5096 (Combined Certificate)~~

~~The name and address to whom the insured should direct all correspondence including claims is Tracey Garrett Capita Commercial Insurance Services Limited (Capita), 40 Dukes Place, London EC3A 7NH. Capita Commercial Insurance Services Limited is authorised and regulated by the Financial Services Authority (FSA)~~

~~All complaints should be referred in the first instance to Capita.~~

~~If you are not satisfied with the way a complaint has been dealt with, you may ask the Policyholder and Market Assistance Department at Lloyd's to review your case without prejudice to your rights in law. The address is:~~

~~-Policyholder and Market Assistance, Lloyd's Market Services, One Lime Street, London, EC3M 7HA.  
Telephone 020 7623 7100  
Lloyd's is regulated by the Financial Services Authority (FSA)~~

~~Signed: ..... Date:.....~~

~~Print name: Tracey Garrett~~

~~For and on behalf of The Assigned Risks Pool Manager Capita Commercial Insurance Services Limited.~~

~~WRITTEN LINES:~~

~~Qualifying Insurer:~~

~~Signed and accepted on behalf of  
Qualifying Insurer:~~

~~Participation: Participation to be determined in accordance with  
schedule 1, section 3 of the Qualifying Insurers  
Agreement 2012.~~

~~Reference:~~

~~Date of signature:~~

## ~~Schedule 10~~ Schedule 5

**Glossary definitions and interpretation used in Rules as at 1 October ~~2012~~ 2013**

### 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 ~~an eligible firm may obtain~~certain firms obtained professional indemnity insurance against civil liability ~~by means of an ARP policy up to 30 September 2013 pursuant to and~~ on the terms set out ~~in Part 3 of~~ the SRA Indemnity Insurance Rules. ~~ARP default premium means the premium calculated in accordance with Part 2 of Appendix 2 to 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*.

~~ARP policy means a contract of professional indemnity insurance issued by the ARP manager on behalf of qualifying insurers to an eligible firm in the ARP including where the context permits a policy provided to a firm in default.~~

~~ARP premium means the premium calculated in accordance with Part 1 of Appendix 2 to the SRA Indemnity Insurance Rules.~~

~~ARP run-off policy means a contract of professional indemnity insurance issued by the ARP manager on behalf of qualifying insurers to a run-off firm in the ARP.~~

~~ARP run-off premium means the premium calculated in accordance with Part 3 of Appendix 2 to the SRA Indemnity Insurance Rules.~~

**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, ~~in respect of a firm and its policy of qualifying insurance,~~ the period commencing on the expiry of the *extended indemnity period* ~~in circumstances where, during the extended indemnity period the relevant firm has not ceased practice or obtained a policy of qualifying insurance for a period of insurance or, if prior to 30 September 2013, the remainder of the indemnity period (as the case may be) that immediately follows the period of insurance to which the relevant~~ incepting with effect on and from the day immediately following expiration of the policy relates ~~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 ~~commencement~~ from the day immediately following expiration of the ~~extended indemnity policy~~ period;
- (ii) the date which is 90 days after the commencement of ~~that~~ 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 qualifying 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.

**eligible firm** means any firm which is eligible to be in the ARP, being any firm other than:

- ~~(i) a firm that has been in the ARP or, in respect of a licensed body, any similar arrangement for the provision of professional indemnity insurance for six months or more in the four indemnity periods immediately prior to the date from which cover is sought, without the prior written approval of the Council unless:
 
  - ~~(A) subject to sub-paragraph (B), immediately prior to 1 October 2011 the firm was in the ARP and had been in the ARP, without the prior written approval of the Council, for less than twelve months in the four indemnity periods immediately prior to that date, in which case the firm is eligible to be in the ARP only for any unexpired part of the twelve month period; or~~
  - ~~(B) immediately prior to 1 October 2010 the firm was in the ARP and had been in the ARP, without the prior written approval of the Council, for less than twenty four months (or twenty five months in the case of a firm which was in the ARP for the whole of the indemnity period from 1 September 2003 to 30 September 2004) in the four indemnity periods immediately prior to that date, in which case the firm is eligible to be in the ARP only for any unexpired part of the twenty four or twenty five month period (as the case may be);~~~~
- ~~(ii) a firm determined by the Council not to be an eligible firm by reason of its being treated as one single firm with one or more other firms already in the ARP for the purposes of Rule 12.6 or Rule 12.7; or~~
- ~~(iii) subject to Rule 12.4, a firm that at the end of any indemnity period to which the SRA Indemnity Insurance Rules apply is in policy default; or~~
- ~~(iv) a firm which, at the time it applies to enter the ARP already has in place qualifying insurance outside the ARP for the indemnity period in which that firm requests cover through the ARP to commence; or~~
- ~~(v) a firm that has never had in place qualifying insurance except through the ARP, unless:
 
  - ~~(A) subject to sub-paragraph (B), immediately prior to 1 October 2011 the firm was in the ARP and had been in the ARP, without the prior written approval of the Council, for less than twelve months in the four indemnity periods immediately prior to that date; or~~
  - ~~(B) immediately prior to 1 October 2010 the firm was in the ARP and had been in the ARP, without the prior written approval of the Council, for less than twenty four months (or twenty five months in the case of a firm which was in the ARP for the whole of the indemnity period from 1 September 2003 to 30 September 2004) in the four indemnity periods immediately prior to that date;~~~~

~~in which case the firm is eligible to be in the ARP only for any unexpired part of the twelve, twenty four or twenty five month period (as the case may be).~~

**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 ~~last indemnity policy period to which the policy relates~~ and ending on the date which is the earlier to occur of:

- (i) the date ~~which is 30 days after the end of the last indemnity period to which the policy relates;~~
- ~~(ii) the date, if any, on which the firm obtains a policy of qualifying insurance in respect of the relevant firm incept that is applicable to the indemnity period or the remainder of the indemnity period (as the case may be) which immediately follows the last indemnity period to which the relevant policy relates; 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*.

~~**firm in default** means a firm that has failed to obtain qualifying insurance outside the ARP and which,~~

- ~~(i) in the case of an eligible firm, has failed to apply in accordance with the SRA Indemnity Insurance Rules to be admitted into the ARP before either the start of any indemnity period to~~



~~which the *SRA Indemnity Insurance Rules* apply or the start of its *practice*, whichever is the later; or~~

~~(ii) in the case of a *firm* which is not an *eligible firm*, is a *firm* which is carrying on or continuing to carry on a *practice* without *qualifying insurance* outside the *ARP*; or~~

~~(iii) in the case of a *run-off firm*, is a *run-off firm* which has failed to make an application in the manner prescribed by the *SRA Indemnity Insurance Rules* to be issued with an *ARP run-off policy*; or~~

~~(iv) is a *firm* which is a “firm in default” by virtue of Rule 10.4 of the *SRA Indemnity Insurance Rules*, or a *firm* which, having previously obtained *qualifying insurance*, has failed to obtain alternative *qualifying insurance* when required to do so in accordance with Rule 6 of the *SRA Indemnity Insurance Rules*.~~

**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 *qualifying 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 *qualifying 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 default** means in relation to a *firm in default* the period starting with the date when such *firm* first became a *firm in default* and ending with the date when it ceased to be a *firm in default*.~~

**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 *qualifying participating insurer*, and a *firm*; ~~including where the context permits an *ARP policy* and an *ARP run-off policy*.~~

### **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* ~~(including without limitation any payment due under Rule 15.1);~~ or
- (B) ~~to pay for more than two months after the due date for payment all or any part of any *ARP premium*, any *ARP default premium*, or any *ARP run-off premium*, or any instalment payable in relation thereto whether payable to the *ARP manager* or otherwise; or (C) ——— to reimburse within two months a *qualifying insurer* (including the *ARP manager* on behalf of *qualifying insurers*)~~ *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 *qualifying participating insurer* ~~or by the *ARP manager*,~~
- (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*.

~~**qualifying insurer** means an authorised insurer which has entered into a qualifying 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.~~

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

**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 **qualifying 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~~, [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.

~~**special measures** means such measures as the Council may from time to time require with a view to reducing the risk of claims being made against a firm in the future or with a view to enabling a firm in the future to obtain qualifying insurance outside the ARP including, without limitation, requiring a firm to establish, agree with the SRA and implement either:~~

~~(i) — a rehabilitation plan; or~~

~~(ii) — a plan for the orderly closure of the firm in a manner which fully protects its clients' interests,~~

~~in either case on such terms, in such format and with such content as the SRA may require.~~

**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 ~~2012~~, [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 firm** means for the purpose of Rule 12 of the SRA Indemnity Insurance Rules any firm or firms resulting from:~~

~~(i) — a split in the practice of a firm that has at any time been in the ARP; or~~

~~(ii) — the merger, acquisition, absorption or any other form of takeover of a firm that has at any time been in the ARP.~~

**successor practice**

(i) means a *practice* identified in this definition as 'B', where:

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- (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 ..... ) .....  
..... ) Duly authorised  
for and on behalf of **THE LAW SOCIETY OF** )  
**ENGLAND AND WALES** )

**SIGNED by ..... ) .....  
..... ) Duly authorised  
for and on behalf of **CAPITA COMMERCIAL** )  
**INSURANCE SERVICES LIMITED** )**

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

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## 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.

### Part 1: General

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#### Rule 1: Authority and commencement

- 1.1 These Rules are made on [date to be inserted] 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*, *REs*, *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 *qualifying insurers* with effect from 1 October 2013.

#### Commentary:

These Rules apply to:

- solicitors
- REs
- 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 qualifying 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;
  - (d) these Rules will be governed by and interpreted in accordance with English law.

### Part 2: Responsibility and monitoring

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#### 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 qualifying insurer. A list of qualifying insurers appears on the website of the SRA at [www.sra.org.uk](http://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 qualifying insurer commencing on the day following such expiration, the firm’s qualifying 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 incepts 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 qualifying 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 qualifying 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 qualifying 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 qualifying insurer

- 6.1       If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *qualifying insurer* (whether alone or together with other *qualifying insurers*) and that *qualifying 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 *qualifying 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 qualifying insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a qualifying 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 qualifying 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

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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 *qualifying insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

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 *qualifying insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

## Part 4: [Deleted]

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Rule 14: [Deleted]

Rule 15: [Deleted]

## Part 5: Disciplinary offences and reporting

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### 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 *qualifying 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 *qualifying 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 qualifying 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 *qualifying 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 qualifying 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 *qualifying 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.
- 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 *qualifying 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*, and
  - (c) the *firm* obtains a *policy* of *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 *qualifying 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 qualifying 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 qualifying 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 *qualifying insurer(s)* who issued the *policy*; and
  - (b) the *policy* number; and
  - (c) the address and contact details of the *qualifying 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 qualifying insurer where it considers it appropriate to do so.

## Part 6: General powers of the Council

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### 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

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### 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 qualifying insurer is required under the qualifying 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.

## [Draft] SRA Indemnity Insurance Rules 201~~2~~<sup>3</sup>

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.

### Part 1: General

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#### Rule 1: Authority and commencement

- 1.1 These Rules are made on ~~22 June 2012~~[\[date to be inserted\]](#) 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 201~~2~~<sup>3</sup>.
- 1.3 These Rules require *solicitors*, *REs*, *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 *qualifying participating insurers* with effect from 1 October 201~~2~~<sup>3</sup>.

#### Commentary:

These Rules apply to:

- solicitors
- REs
- 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 201~~2~~<sup>3</sup>. 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 201~~2~~<sup>3</sup>.

#### 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 201~~2~~<sup>3</sup>, firms must take out insurance in accordance with these Rules with one or more **qualifying 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 201~~4~~<sup>2</sup> shall not apply in respect of any **indemnity period** beginning on or after 1 October 201~~2~~<sup>3</sup> but they shall remain in force in respect of the **indemnity period** from 1 October 201~~4~~<sup>2</sup> to 30 September 201~~2~~<sup>3</sup> 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 201~~2~~<sup>3</sup>.

### 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;
  - (d) these Rules will be governed by and interpreted in accordance with English law.

## Part 2: Responsibility and monitoring

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### Rule 4: Obligation to effect insurance

- 4.1 All **firms** carrying on a **practice** during any **indemnity period** beginning on or after 1 October 201~~2~~<sup>3</sup> 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 renew its existing *policy of qualifying insurance* or obtain a *policy of qualifying insurance* from an alternative *qualifying insurer* prior to the expiration~~ if the *firm* has been unable to obtain a *policy of qualifying insurance* from an alternative *qualifying insurer* 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* ~~must~~ that provides cover incepting on and with effect from the expiry of the *policy period*; and

(a)(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* ~~on~~ during or ~~before~~ prior to the expiry of the *cessation period* which that provides cover that incepts incepting on and with effect on and from the commencement expiry of the *extended indemnity 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 5.32.~~ 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* ~~on~~ during or ~~before~~ prior to the expiry of the *cessation period* which that provides cover that incepts incepting on and with effect on and from the commencement expiry of the *extended indemnity 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 5.32.

4.24.3 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*.

~~4.3 — A *run-off firm* must apply in accordance with these Rules to be issued with an *ARP run-off policy*.~~

#### 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 2012<sup>23</sup>. 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 *qualifying participating* insurer. A list of *qualifying participating* insurers appears on the website of the SRA at [www.sra.org.uk](http://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 ~~2012 indemnity policy~~ period, fails to obtain a policy of qualifying insurance from a *qualifying participating* insurer ~~for a period of insurance~~ commencing on ~~1 October 2013~~ the day following such expiration, the firm’s *qualifying participating* insurer ~~(except for the ARP)~~ 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 (~~that is, before the expiry of~~ 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 commencement~~expiry~~ of the ~~new indemnity~~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 5.32. 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 ~~qualifying participating~~ insurer ~~(except for the ARP)~~ 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 ~~qualifying 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 ~~before the end of an indemnity period~~ unless:

~~1. the policy is an ARP policy and the firm has replaced it with a policy of qualifying insurance outside the ARP; or~~

~~2.1.~~ the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or

~~3.2.~~ it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or

~~4. in the case of an ARP policy, it subsequently transpires that the firm was not, or has ceased to be, an eligible firm; or~~

~~5.3.~~ the ~~qualifying~~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.

~~The effect of cancellation in the circumstances described in 3 or 4 above is that the firm ceases to have qualifying insurance in place with effect from the cancellation, and would therefore be in breach of Rule 4.1 if it were to carry on a practice thereafter without taking out a new policy.~~

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* during any ~~indemnity period~~ beginning on or after 1 October 201~~23~~, 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.

~~(a) — that the *firm* has in place and maintains *qualifying insurance* outside the *ARP* during any such *indemnity period*;~~

~~or, in the case of an *eligible firm*,~~

~~(b) — that the *firm* has applied to enter the *ARP* in accordance with the procedure set out in Rule 10;~~

~~in either case before the start of any relevant *indemnity period* or the start of *practice* whichever is later.~~

### 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 — A *run-off firm*, and any person who was a *principal* of that *run-off firm* immediately prior to it becoming a *run-off firm*, must ensure that the *run-off firm* has applied to enter the *ARP* in accordance with the procedure set out in Rule 14.4(a). Making such an application does not absolve any *firm* or person from any breach of Rule 5.1.~~

### Commentary:

~~A firm which has continued to practise without qualifying insurance immediately prior to closing down is required to apply for run-off cover through the *ARP*, but the firm and any principal of the firm may still face action for a breach of Rule 5.1 for practising without qualifying insurance.~~

- ~~5.3~~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 ~~qualifying~~ participating insurer

~~6.1~~ — If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a ~~qualifying~~ participating insurer (whether alone or together with other ~~qualifying~~ participating insurers) and that ~~qualifying~~ 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 :

~~6.26.1~~ that the *firm* has in place *qualifying insurance* with another ~~qualifying~~ 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*;

~~or, in the case of an *eligible firm*,~~

~~(a) — that the *firm* applies within that period of four weeks to enter the *ARP* in accordance with the procedure set out in Rule 10.~~

### 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 ~~qualifying~~ participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a ~~qualifying~~ 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 ~~qualifying~~ 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.

~~6.3 — Any *firm* that enters the *ARP* by reason of a *qualifying insurer* being subject to an *insolvency event* may not remain in the *ARP* beyond 30 September 2013, regardless of the date on which the *firm* entered the *ARP*, except in respect of an *ARP policy* under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the *ARP policy* commences on or before 1 October 2013 or an *ARP run-off policy* which incepts on or before 30 September 2013).~~

## 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

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### ~~Rule 9: Operation of the ARP~~

- ~~9.1 The *ARP* shall be managed by the *ARP manager*.~~

### ~~Rule 10: Applying to the ARP~~

- ~~10.1 Where a *firm* carrying on a *practice* has not obtained *qualifying insurance* outside the *ARP* in respect of any *indemnity period* or part thereof to which these Rules apply it must, if an *eligible firm*, apply in accordance with the procedure set out in this Rule 10 to enter the *ARP*, subject to Rule 10.2, before the start of the relevant *indemnity period*.~~

#### ~~Commentary:~~

~~A firm which for any reason does not have qualifying insurance in place should apply to the ARP before the start of the relevant indemnity period if it is an eligible firm. However, it is important to note that premiums payable to the ARP are intended to be high, and firms would therefore be prudent to seek quotations from qualifying insurers outside the ARP before the start of an indemnity period.~~

~~An ARP policy can be cancelled if it is replaced by a policy with a qualifying insurer. A return premium may be payable to a firm which cancels an ARP policy in these circumstances – refer to Appendix 2 for the basis on which the ARP premium and any return premium is calculated.~~

~~Firms should also be aware of the other consequences of being insured through the ARP set out in this part of the Rules, including the need to comply with any special measures under Rule 10, and the limitations on eligibility set out in the definition of “eligible firm”.~~

- ~~10.2 A *firm* must not start carrying on a *practice* without having obtained *qualifying insurance* outside the *ARP*.~~

#### ~~Commentary:~~

~~Any firm wishing to start up a new practice must obtain qualifying insurance with a qualifying insurer other than the ARP, before starting practice. For the avoidance of doubt, a firm which has not previously been regulated by the SRA or a non-SRA firm that elects (and is accepted) for regulation by the SRA must also arrange qualifying insurance outside the ARP in order to commence carrying on a practice. Subject to this requirement, a new firm may start practice at any time during an indemnity period.~~

- ~~10.3 By applying to enter the *ARP*, the *firm* and any person who is a *principal* of that *firm* agrees to, and (if the *firm* is admitted to the *ARP*) the *firm* and any person who is a *principal* of that *firm* shall be jointly and severally liable to:~~

- ~~(a) — pay the **ARP premium** in accordance with these Rules, together with any other sums due to the **ARP manager** under the **ARP policy**; and~~
- ~~(b) — submit to such investigation and monitoring and to pay the **Society's** costs and expenses as referred to in Rule 11.2; and~~
- ~~(c) — pay any costs and expenses incurred by the **Society** or the **ARP manager** incurred as a result of any failure or delay by the **firm** in complying with these Rules;~~

~~and shall be required to implement at the expense of the **firm** any **special measures**.~~

~~10.4 — Any material misrepresentation made in an application for admission to the **ARP** shall, subject to any waiver under Rule 19.1, render the **firm** a **firm in default** for the purposes of Part 4 of these Rules. The provisions of that Part shall apply to the **firm** as if that **firm** had not been admitted to the **ARP** but neither the **firm** nor any **principal** of the **firm** shall be entitled to the refund of any **ARP premium** paid to the **ARP manager**. Any amount so paid shall be credited against any sums payable under Part 4 of these Rules.~~

**Commentary:**

~~Although an ARP policy, once issued, cannot be cancelled (unless and until a replacement policy with a qualifying insurer is issued to that firm), a firm which makes a material misrepresentation in its application to be admitted to the ARP will be nevertheless treated in the same way as a firm in default.~~

~~10.5 — The application for admission to the **ARP** must be made to the **ARP manager** on the proposal form provided by the **ARP manager**.~~

~~10.6 — The applicant must state on the proposal form the date from which cover is sought. This date must not be earlier than the date on which the application is made for admission to the **ARP**. The applicant must also provide such other information as the **ARP manager** requires for the purposes of setting a premium.~~

~~10.7 — If the applicant is a **firm in default** it must state on the proposal form that it is a **firm in default** and give the date of the start of the **period of default** from which retrospective cover is sought.~~

**Commentary:**

~~The ARP premium is calculated in accordance with a formula set out in Appendix 2, and is linked to the gross fees of the firm concerned. It is important to note that, under Rule 15, any material misrepresentation in an application will result in the firm being treated in the same way as a firm in default, including being liable to pay the ARP default premium.~~

~~10.8 — The **firm**, together with each **principal** of the **firm**, must ensure that the **firm's** application has been made and must provide the **ARP manager** with all information it reasonably requires to process the application.~~

**Commentary:**

It is in the interests of the firm and each of the principals of that firm to verify that the application to enter the ARP has been received and that the firm is insured. An application should be made before the start of an indemnity period. Failure to comply with the requirements of this Rule and Rules 14 and 15 will result in the firm becoming a firm in default.

10.9 — If a *firm* has not received a written acknowledgement of its application from the *ARP manager* 30 days after making the application, or within such other period as is stated on the proposal form, the *firm* and any person who is a *principal* of the *firm* must seek written confirmation that the *firm's* application has been received by the *ARP manager*. If that written confirmation is not obtained within seven days after the end of the 30 days, or within seven days after such other period specified on the proposal form, the application shall be deemed not to have been made.

10.10 — An applicant whose first application is deemed under Rule 10.9 not to have been made must, within seven days of the day when under Rule 10.9 the first application is deemed not to have been made, make a fresh application. The *firm* and any person who is a *principal* of the *firm* must ensure that the *firm* is in a position to prove to the reasonable satisfaction of the *Society* that the *firm's* fresh application was delivered within those seven days to the *ARP manager* at the address specified on the proposal form. Provided the *firm's* fresh application was so delivered, the application shall be treated as having been made at the date when the *firm's* first application was made. A *firm* that is not in a position to prove to the reasonable satisfaction of the *Society* that its fresh application was so delivered shall be deemed not to have made any application.

10.11 — Provided that an application or, if necessary, a fresh application, has been made in accordance with Rules 10.5 to 10.10, a *firm* which is an *eligible firm* will be covered in the terms of the *ARP policy* to be issued to it from the start of the relevant *indemnity period* or, in the case of a *firm* to which Rule 10.2 applies, the date specified in the application, being the date specified in accordance with Rule 10.6, until whichever is the earlier of:

- (a) — the end of the relevant *indemnity period*; or
- (b) — the date on which the *firm* obtains *qualifying insurance* outside the *ARP*;  
or
- (c) — the date when the *firm* ceases to be an *eligible firm*.

**Commentary:**

An eligible firm which should have applied to the ARP before the start of an indemnity period but fails to do so will have breached these Rules by failing to take out a policy from the start of that indemnity period. It may make a later application, but will be liable to pay the ARP default premium for the indemnity period in question. Each principal in an eligible firm which fails to make an application in time commits a disciplinary offence.

~~10.12— Any **firm** in the **ARP**, and any person who is a **principal** of that **firm**, is liable to pay to the **ARP manager** the **ARP premium** in respect of that **firm** within thirty days of such premium being notified to it by the **ARP manager**.~~

**Commentary:**

~~It is a disciplinary offence for a firm and for any principal of that firm to fail to pay the ARP premium (including the ARP run-off premium) to the ARP manager within the required 30 day period. A firm may enter into arrangements with, for example, a premium funding company (whether offered by the ARP manager or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the ARP manager from the premium funding company within the required 30 day period.~~

**Rule 11:— Special measures**

~~11.1— An **eligible firm** that has applied to enter the **ARP** in accordance with the procedure set out in Rule 10 will be issued with an **ARP policy** by the **ARP manager**.~~

**Commentary:**

~~A copy of the standard form ARP policy is available on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk) and is also available from the SRA. Contact details appear at the end of the introductory commentary.~~

~~11.2— A **firm** in the **ARP** must if and to the extent required by the **Council** submit to investigation and monitoring by the **Society** and/or its agents, including investigation and monitoring:~~

~~(a) — to determine the reasons why **qualifying insurance** outside the **ARP** was not obtained;~~

~~(b) — to ascertain what **special measures** should be taken by the **firm**.~~

~~The **Society's** costs and expenses of the investigation and monitoring and the **Society's** costs and expenses of ascertaining what **special measures** should be taken and of monitoring them shall be met by the **firm** and by any person who is a **principal** of that **firm**. The amount of such costs and expenses shall be determined by the **Society** which shall not be required to give any detailed breakdown thereof.~~

**Rule 12:— Time in the ARP**

~~12.1— Notwithstanding the provisions of any other Rule, no **firm** may remain in the **ARP** beyond 30 September 2013, regardless of the date on which the **firm** entered the **ARP**, except in respect of an **ARP policy** under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the **ARP policy** commences on or before 1 October 2013 or an **ARP run-off policy** which incepts on or before 30 September 2013.~~

~~12.2— A **firm** may leave the **ARP** at any time after it has satisfied the **ARP manager** that the **firm** has obtained **qualifying insurance** outside the **ARP** at least until the expiry of the relevant **indemnity period**.~~



**Commentary:**

~~Refer to Appendix 2 to determine whether any return premium will be payable on leaving the ARP.~~

~~12.3—Subject to Rule 12.7, a **firm** may only remain in the **ARP** so long as it is an **eligible firm**, or if it becomes a **run-off firm**.~~

**Commentary:**

~~A firm cannot remain insured through the ARP for more than 6 months in any four consecutive indemnity periods (unless it satisfies one of the exceptions to this requirement in the definition of “eligible firm”), and should therefore seek insurance in the open market with a qualifying insurer as soon as practicable. A firm which is no longer an eligible firm (because, for example, it has already been insured through the ARP for 24 months in the last four indemnity periods) must either obtain qualifying insurance on the open market or cease carrying on practice.~~

~~12.4—Subject to Rule 12.7(b), a **firm** in **policy default** at the end of an **indemnity period** shall be deemed to be a **firm in default** for the purposes of Part 4 of these Rules and shall not be an **eligible firm**. This Rule shall not apply in any case where the **Council** is satisfied that there exists a genuine dispute between the **firm** and a **qualifying insurer** or the **ARP manager** which makes it unreasonable for the **firm** to be deemed to be a **firm in default** pending the resolution of that dispute.~~

**Commentary:**

~~A firm in policy default must remedy that default before the start of an indemnity period if it wishes to obtain insurance through the ARP at any time during that indemnity period. Alternatively, it must either obtain qualifying insurance in the open market, or cease carrying on practice. If a firm believes that there is a genuine dispute which justifies that firm not being deemed to be a firm in default, it should apply to the SRA as soon as possible before the start of the next indemnity period. Contact details appear at the end of the introductory commentary.~~

~~12.5—A **firm** that is no longer an **eligible firm** must either have **qualifying insurance** outside the **ARP** or forthwith cease carrying on **practice**.~~

~~12.6—The **Council** may in its absolute discretion treat a **successor firm** or **successor firms** (or any of them) and the **firm** from which such **successor firm** or **successor firms** were derived as being a single **firm** for the purposes of determining whether the **successor firm** or **successor firms** or any of them are or remain an **eligible firm**.~~

**Commentary:**

~~The purpose of this Rule is to ensure that the time limit on participation in the ARP cannot be avoided by a merger or reconstitution of that firm. A firm which was not previously eligible to join the ARP will not necessarily become an eligible firm by virtue of changes in the composition of a firm. Firms which are unsure about their eligibility following any such~~



~~change should consult the SRA. Contact details appear at the end of the introductory commentary.~~

~~12.7 — Subject to a **firm** not being admitted into, remaining in or re-entering the **ARP** in respect of any **indemnity period** commencing after 30 September 2013 (except to permit a **firm** with an **ARP policy** which, on or before 1 October 2013, enters the period of run-off cover stipulated by clauses 5.1 and 5.2 of the **ARP policy** or a **firm** with an **ARP run-off policy** as at 30 September 2013, in each case, to continue to receive the run-off cover provided by such **policy**), the **Council** shall have power in any particular case or cases:~~

- ~~(a) — to allow a **firm** to remain in or to re-enter the **ARP** after any date when the **firm** would otherwise cease to be an **eligible firm**; and~~
- ~~(b) — to permit a **firm** to be admitted into or remain in or to re-enter the **ARP** notwithstanding that the **firm** is in **policy default** on such terms and conditions as the **Council** may prescribe including the taking of steps by the **firm** by a specified date or dates to remedy the **policy default**;~~

~~and when such power is exercised the **firm** shall continue to be an **eligible firm** for so long as the **Council** may from time to time permit and provided that it complies with any such terms and conditions.~~

#### **Commentary:**

~~It is envisaged that these powers would be exercised only in exceptional circumstances. Any application seeking the exercise of this power should be made to the SRA at least three months before the firm in question would otherwise cease to be an eligible firm.~~

**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 **qualifying participating insurers** agreeing to underwrite the liabilities of the **ARP** in respect of the **indemnity period** commencing on 1 October 2012.

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 *qualifying participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

## ~~Part 4: Firms in default~~

### ~~Rule 14: Eligibility of firms in default~~

~~14.1 At any time during the *period of default* a *firm in default* is entitled to be admitted to the *ARP* and to be issued with an *ARP policy* in accordance with Rule 14.2, subject to the provisions of this Rule 14.~~

~~14.2 A *firm in default* is entitled to be admitted to the *ARP* if:~~

- ~~(a) it was an *eligible firm* at the start of the *period of default*;~~
- ~~(b) had it been admitted to the *ARP* at the start of the *period of default*, its admission at that time would not have rendered it ineligible to be admitted to the *ARP* for any part of any subsequent *indemnity period* in which it was in fact admitted to the *ARP*;~~
- ~~(c) it has applied to join the *ARP* in accordance with Rule 10;~~
- ~~(d) the *firm* discharges in full the *ARP default premium* calculated for the whole of the *indemnity period* or *indemnity periods* for which cover is sought within 30 days of such premium being notified to it by the *ARP manager* or such longer period as the *Council* may allow;~~
- ~~(e) the *firm* will be subject to and comply with Rules 10.3 (other than Rule 10.3(a)) and 11.2.~~

#### ~~Commentary:~~

~~If a firm fails to make an application to the *ARP* at the start of an indemnity period, and does not have any other policy of qualifying insurance in force for that indemnity period, it may still be eligible to be issued with an *ARP policy* provided that it meets all of the requirements of Rule 14.2. However, each principal of the firm will have committed a disciplinary offence, and the firm and each principal of that firm will be liable to pay the *ARP default premium* under any *ARP policy* issued.~~

~~14.3 An *ARP policy* issued under this Rule may afford cover retrospectively from the start of the *period of default* until the earlier of:~~

- ~~(a) the end of the then current *indemnity period*; or~~

- (b) ~~the date on which the **firm in default** would have ceased to be an **eligible firm**, ignoring for these purposes any failure to pay the **ARP premium** or the **ARP default premium**; or~~
- (c) ~~the date on which, had the **firm in default** been admitted to the **ARP** at the start of the **period of default**, its being covered by the **ARP** from that time would have first caused it to have been ineligible to be admitted to the **ARP** for any part of any subsequent **indemnity period** in which it was in fact admitted to the **ARP**.~~

14.4 ~~A **run-off firm** shall be entitled at any time following the date on which it first becomes a **run-off firm** to be admitted to the **ARP** and to be issued with an **ARP run-off policy**, subject to the following conditions:~~

- (a) ~~the **run-off firm** has made an application to join the **ARP** in manner provided by Rule 10.5 stating on the proposal form that it is a **run-off firm** and giving the date from which cover under an **ARP run-off policy** is sought;~~
- (b) ~~the **ARP run-off premium** is discharged in full within thirty days of such premium being notified by the **ARP manager** to the **firm** or such longer period as the **Council** may allow; and~~
- (c) ~~the **firm**, and any person who is a **principal** of that **firm**, will be subject to and comply with Rule 10.3(c).~~

**Commentary:**

A run-off firm will be eligible to be issued with an ARP policy if it meets all of the requirements of Rule 14.4. However, each principal of the firm will have committed a disciplinary offence for failing to make an application to the ARP for run-off cover in accordance with Rule 5.2, and the firm and each principal of the firm will be required to pay the ARP run-off premium under any ARP run-off policy issued.

14.5 ~~An **ARP run-off policy** shall provide run-off cover to a **run-off firm** retrospectively from the date on which it became a **run-off firm** until the end of the day immediately prior to the sixth anniversary of:~~

- (a) ~~the start of the **indemnity period** in which it became a **run-off firm**; or~~
- (b) ~~if applicable, the start of the last **indemnity period**, prior to it becoming a **run-off firm**, in which it both ceased to be an **eligible firm** and was a **firm in default** and continued as such until the date on which it became a **run-off firm**;~~

~~whichever is the earlier.~~

**Commentary:**

Run-off firms which are issued with an ARP run-off policy obtain six years' run-off cover either from the start of the indemnity period in which their practice ceased, or the date on which they ceased to be eligible to apply for an ARP policy while practising uninsured.

~~14.6— Rule 12.7 shall apply so as to enable the **Council** to extend the period in Rule 14.3(b) for which a **firm in default** may be issued with an **ARP policy**.~~

**Commentary:**

~~It is envisaged that this power would be exercised only in exceptional circumstances.~~

~~14.7— Any **firm** that has been admitted to the **ARP** under Rule 14.1 shall for the purposes of computing its continuing eligibility to remain in the **ARP** be deemed to have been admitted to the **ARP** at start of the **period of default** and to have remained continuously in the **ARP** until the end of the **indemnity period** current at the date of its application.~~

**Commentary:**

~~If a firm is eligible to be issued with an ARP policy under Rule 14.1, or an ARP run-off policy under Rule 14.4 then, provided that it complies with the relevant requirements under Rule 14 and is issued with an ARP policy or an ARP run-off policy, the firm and the principals of that firm will be required to pay to the ARP manager only the relevant premium and the excess in the event of any claim.~~

**Rule 15:— Firms which fail to apply to the ARP**

~~15.1— A **firm in default** which is entitled to be admitted to the **ARP** and to be issued with an **ARP policy** in accordance with Rule 14.1 but which does not make an application to join the **ARP** shall, notwithstanding, be liable, together with any person who is a **principal** of that **firm**, to pay to the **Society** an amount equivalent to the **ARP default premium** calculated for the whole of the **period of default**.~~

~~15.2— A **firm in default** which is entitled to be admitted to the **ARP** and to be issued with an **ARP run-off policy** in accordance with Rules 14.4 and 14.5 but which does not make an application to join the **ARP** shall, notwithstanding, be liable, together with any person who is a **principal** of that **firm**, to pay to the **Society** an amount equivalent to the **ARP run-off premium** calculated for the whole of the period equivalent to that which would be provided by an **ARP run-off policy** in accordance with Rule 14.5, or, if shorter and if it can be ascertained, the **period of default**.~~

~~15.3— Any amount payable in accordance with Rules 15.1 or 15.2 shall be determined by the **ARP manager** on the basis of such assumption as to the **firm's** gross fees and other matters as the **ARP manager** shall in its absolute discretion determine, and may be reviewed from time to time by the **ARP manager** in its absolute discretion on the basis of any further information provided to it. The **ARP manager** may and is hereby authorised to recover all sums due under Rules 15.1 or 15.2 on behalf of the **Society**.~~

**Commentary:**

~~If a firm fails to make an application to the ARP, but carries on practice without having obtained qualifying insurance, each principal in that firm will have committed a disciplinary offence. The same is true if a run-off firm fails to apply to be issued with an ARP run-off policy. In each case, that firm, and each principal in that firm, will also be liable under these~~

~~Rules to pay an amount to the Society equivalent to the ARP default premium calculated for the whole of the period of default.~~

## 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 The provisions in Part 4 of the Rules are made without prejudice to the powers of the **Council** or the **Society** under the **SA**, the **AJA**, the Courts and Legal Services Act 1990, the European Communities (Lawyer's Practice) Regulations 2000 or the **LSA**, or rules made under any of them, to bring disciplinary proceedings or take disciplinary action against any **firm** that has failed to comply with these Rules or any person who is or was a **principal** in such a **firm** or to intervene in a **practice** carried on by such a **firm**.~~

### **Commentary:**

~~Payment of the ARP default premium and/or the ARP run-off premium does not detract from the fact that the firm in question, and each principal of that firm, has committed a breach of these Rules as a result of the firm being a firm in default. If a firm in default is not an eligible firm, it must either obtain qualifying insurance in the open market, or cease carrying on practice and make an application to the ARP for run-off cover in accordance with Rule 5.2.~~

~~16.2~~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**,
- ~~(b) fail to implement any **special measures** to the satisfaction of the **Society**;~~  
and
- ~~(c) undertake any activities in connection with **private legal practice** in breach of Rule 5.3.~~

### **Commentary:**

~~(d)~~(b) ~~Policy default and special measures are defined in the Glossary. Note that a firm that is carrying on a practice while in policy default will also not be an eligible firm for the purpose of seeking further cover through the ARP<sup>2</sup>.~~

## Rule 17: Use of information

- 17.1 Any **qualifying participating insurer** (~~including the ARP manager~~) shall, in relation to any **firm** which applies to it for **qualifying insurance**, ~~and in the case of the ARP manager any run-off firm or firm in default~~, whether or not that **firm** applies to ~~enter the ARP~~, 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, ~~including an ARP premium, ARP default premium or ARP run-off premium~~, 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 **qualifying 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** **qualifying 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 **qualifying 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, ~~whether they obtain their qualifying insurance on the open market or through the ARP, or whether, having failed to obtain qualifying insurance, they are subject to the provisions of Part 4 of these Rules~~, are deemed to have consented to their **qualifying participating insurer** ~~or the ARP manager~~ 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 **qualifying participating insurer** ~~or the ARP manager~~ 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.
- 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 **qualifying participating insurer** in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which ~~cover under a policy is extended in respect of:~~

- (a) ~~the *firm* enters~~ the *extended indemnity period*; ~~and~~ under its *policy*.
- (b) ~~the *firm* enters~~ the *cessation period*; under its *policy*; and
- (c) ~~in circumstances where the *firm* does not have an alternative~~ obtains a *policy* of *qualifying insurance* where the *firm* is in the *extended indemnity period* or the *cessation period*, and in ~~force at the commencement of each such period~~ 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 ~~qualifying 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 ~~qualifying 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 *qualifying participating insurer(s)* who issued the *policy*; and
- (b) the *policy* number; and
- (c) the address and contact details of the *qualifying 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 *qualifying participating* insurer where it considers it appropriate to do so.

## Part 6: General powers of the Council

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### 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 ~~or 2012~~ 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 ~~or 2012~~ 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 ~~or 2012~~ [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 ~~or 2012~~ [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

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### 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) ~~either~~ that the **firm** has one or more certificates of **qualifying insurance** ~~outside the ARP or~~ [\(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 ~~qualifying~~participating insurer is required under the ~~qualifying~~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 **qualifying 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 **qualifying 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 **qualifying 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, ~~but only where, in the case of insurance not provided wholly or partly by the ARP, the replacement insurance is not provided wholly or partly by the ARP,~~ 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 *indemnity 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; ~~or~~
- ~~(d) in the case of an ARP policy, it subsequently transpires that the insured firm was not or has ceased to be an eligible firm, in which case cancellation shall have effect from the date on which it ceased to be an eligible firm.~~

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.



~~4.12~~ **Period of insurance**

~~The period of insurance must not expire prior to 30 September 2013.~~

**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 ~~last indemnity period to which the policy relates or during the extended indemnity period~~, obtained insurance complying with the ~~MTC for the indemnity period or the remainder of the indemnity period (as the case may be) which~~ and incepting on and with effect from the day immediately following the indemnity period to which expiration of the policy relates 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 ~~MTCs for~~ MTC and incepting on and with effect from the ~~indemnity period or the remainder of the indemnity period (as the case may be) which~~ day immediately following the last indemnity period to which expiration of the policy relates 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 ~~Error! Reference source not found.~~, obtained insurance complying with the *MTC* and incepting on and with effect ~~on and~~ from the ~~commencement~~ day immediately following the expiration of the ~~extended indemnity 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

## SRA Indemnity Insurance Rules 2013 - Appendix 1

- (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 [qualifying 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*.

### ~~7.8 Co-operation and assistance~~

~~The insurance (except in the case of an *ARP policy*) must provide that, if the *ARP manager* is appointed to conduct any *claim*, each *insured* will give the *ARP manager* and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible *claim* or any related proceeding.~~

## 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;

SRA Indemnity Insurance Rules 2013 - Appendix 1

- (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****Rating schedule for 2012/2013****1 Method for calculation of the ARP premium**

~~1.1 The annual ARP premium is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the insured firm. For a £2 million primary policy (£3 million in the case of relevant recognised bodies and relevant licensed bodies (in respect of their regulated activities)), where the Gross Fees are £500,000 or less, the annual ARP premium is calculated at a rate of 27½% of the fees declared (30% in the case of relevant recognised bodies and relevant licensed bodies (in respect of their regulated activities)). Where the Gross Fees of the insured firm are £500,001 or more, the annual ARP premium is the sum of:~~

- ~~• the maximum premium for the previous fee band; plus~~
- ~~• the marginal rate on Fees applied to the amount of fees that exceed the ceiling of the previous fee band.~~

~~There is a minimum premium of £1,500 irrespective of the level of Gross Fees, or the period of time spent in the ARP during an indemnity period.~~

~~1.2 Firms other than relevant recognised bodies and relevant licensed bodies (£2 million indemnity limit)~~

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
<del>1 £0 to £500,000</del>	<del>27.5%</del>	<del><math>27.5\% \times £500,000 = £137,500</math></del>	<del>£137,500</del>	<del>27.50%</del>
<del>2 £500,001 to £1,500,000 e.g. if fees £1,000,000</del>	<del>22%</del>	<del>£137,500 (maximum premium for fee band 1) plus <math>22\% \times £1,000,000 = £220,000 = £357,000</math> <math>£137,500 \text{ plus } (22\% \times £500,000 = £110,000) = £247,500</math></del>	<del>£357,000</del>	<del>23.826%</del>
<del>3 £1,500,001 to £3,000,000 e.g. if fees £2,250,000</del>	<del>16.5%</del>	<del><math>16.5\% \times £1,500,000 = £247,500</math> plus £357,000 (maximum premium for fee band 2) = £605,000 <math>£357,000 \text{ plus } (16.5\% \times £750,000 = £123,750) = £481,250</math></del>	<del>£605,000</del>	<del>20.163%</del>
<del>4 £3,000,001 to £5,000,000 e.g. if fees £4,000,000</del>	<del>13.2%</del>	<del><math>13.2\% \times £2,000,000 = £264,000</math> plus £605,000 (maximum premium for fee band 3) = £869,000 <math>£605,000 \text{ plus } (13.2\% \times £1,000,000 = £132,000) = £737,000</math></del>	<del>£869,000</del>	<del>17.38%</del>
<del>5 £5,000,001 to £20,000,000 e.g. if fees £10,000,000</del>	<del>11%</del>	<del><math>11\% \times £15,000,000 = £1,650,000</math> plus £869,000 (maximum premium for fee band 4) = £2,519,000 <math>£869,000 \text{ plus } (11\% \times £5,000,000 = £550,000) = £1,419,000</math></del>	<del>£2,519,000</del>	<del>12.595%</del>
<del>6 £20,000,001 +</del>	<del>5.5%</del>	<del><math>5.5\% \times (\text{actual fees} - £20,000,000)</math> plus £2,519,000 (maximum premium for fee band 5) = (annual premium) <math>£2,519,000 \text{ plus } (5.5\% \times £10,000,000) = £550,000 = £3,069,000</math> <math>£2,519,000 \text{ plus } (5.5\% \times £30,000,000 = £1,650,000) = £4,169,000</math></del>	<del>—</del>	<del>—</del>

~~1.3 Relevant recognised bodies and relevant licensed bodies (£3 million indemnity limit)~~

## SRA Indemnity Insurance Rules 2013 - Appendix 2

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%
2 £500,001 to £1,500,000 e.g. if fees £1,000,000	24%	£150,000 (maximum premium for fee band 1) plus $24\% \times £1,000,000 = £200,000 = £390,000$ $£150,000 \text{ plus } (24\% \times £500,000 = £120,000) = £270,000$	£390,000	25.992%
3 £1,500,001 to £3,000,000 e.g. if fees £2,250,000	18%	$18\% \times £1,500,000 = £270,000$ plus £390,000 (maximum premium for fee band 2) = £660,000 $£390,000 \text{ plus } (18\% \times £750,000 = £135,000) = £525,000$	£660,000	24.196%
4 £3,000,001 to £5,000,000 e.g. if fees £4,000,000	14.4%	$14.4\% \times £2,000,000 = £288,000$ plus £660,000 (maximum premium for fee band 3) = £948,000 $£660,000 \text{ plus } (14.4\% \times £1,000,000 = £144,000) = £804,000$	£948,000	18.96%
5 £5,000,001 to £20,000,000 e.g. if fees £10,000,000	12%	$12\% \times £15,000,000 = £1,800,000$ plus £948,000 (maximum premium for fee band 4) = £2,748,000 $£948,000 \text{ plus } (12\% \times £5,000,000 = £600,000) = £1,548,000$	£2,748,000	13.74%
6 £20,000,001 + e.g. if fees £30,000,000 or if fees £50,000,000	6%	$6\% \times (\text{actual fees} - £20,000,000)$ plus £2,748,000 (maximum premium for fee band 5) = (annual premium) $£2,748,000 \text{ plus } (6\% \times £10,000,000) = £600,000 = £3,348,000$ $£2,748,000 \text{ plus } (6\% \times £30,000,000 = £1,800,000) = £4,548,000$	—	—

## 1.4 Primary layer rates

Where an ARP policy is written as a primary layer of £1 million, with excess layer(s) provided by a qualifying insurer, the annual premium due to the ARP in respect of that policy shall be an amount calculated in accordance with the table below:

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	25%	$25\% \times £500,000 = £125,000$	£125,000	25.00%
2 £500,001 to £1,500,000 e.g. if fees £1,000,000	20%	£125,000 (maximum premium for fee band 1) plus $20\% \times £1,000,000 = £200,000 = £325,000$ $£125,000 \text{ plus } (20\% \times £500,000 = £100,000) = £225,000$	£325,000	21.66%
3 £1,500,001 to £3,000,000 e.g. if fees £2,250,000	15%	$15\% \times £1,500,000 = £225,000$ plus £325,000 (maximum premium for fee band 2) = £550,000 $£325,000 \text{ plus } (15\% \times £750,000 = £112,500) = £437,500$	£550,000	18.33%
4 £3,000,001 to £5,000,000 e.g. if fees £4,000,000	12%	$12\% \times £2,000,000 = £240,000$ plus £550,000 (maximum premium for fee band 3) = £790,000 $£550,000 \text{ plus } (12\% \times £1,000,000 = £120,000) = £670,000$	£790,000	15.80%
5 £5,000,001 to £20,000,000 e.g. if fees £10,000,000	10%	$10\% \times £15,000,000 = £1,500,000$ plus £790,000 (maximum premium for fee band 4) = £2,290,000 $£790,000 \text{ plus } (10\% \times £5,000,000 = £500,000) = £1,290,000$	£2,290,000	11.45%



## SRA Indemnity Insurance Rules 2013 - Appendix 2

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
<del>6</del> £20,000,001+	5%	5% x (actual fees — £20,000,000) plus £2,290,000 (maximum premium for fee band 5) = (annual premium)	—	—
<del>e.g. if fees £30,000,000</del>		<del>£2,290,000 plus (5% x £10,000,000) = £500,000 = £2,790,000</del>		
<del>or if fees £50,000,000</del>		<del>£2,290,000 plus (5% x £30,000,000) = £1,500,000 = £3,790,000</del>		

## 1.5 Excess layer rates

Where an ARP policy is written as an excess layer and the primary layer is provided by a qualifying insurer, the annual premium due to the ARP in respect of that policy shall be an amount equal to the percentage set out below of the primary layer rate calculated in accordance with the table above:

Excess layer	Percentage of primary layer rate
£1 million excess of £1 million (or any part thereof)	10%
£2 million excess of £1 million (or any part thereof)	20%
£1 million excess of £2 million (or any part thereof)	10%

## 1.6 Co-insurance

Where an ARP policy is written as co-insurance, on the basis that one or more other qualifying insurers are liable in respect of a proportion only of the sum insured, the premium due to the ARP in respect of that policy shall be an amount equal to  $T \times P$ , where:

**T** = the total annual premium (including any default charge in accordance with Part 2) that would have been due to the ARP in relation to that policy if the ARP was the only insurer multiplied by the short period ARP premium scale determined in accordance with paragraph 1.7 (if applicable)

**P** = the proportion, expressed as a percentage, in respect of which the ARP is liable in relation to that policy

## 1.7 Short Period ARP premium and ARP default premium

Subject to paragraph 1.10, in the case of a firm which:

(a) obtains a policy of qualifying insurance from the ARP for any period other than twelve months commencing on the first day of an indemnity period; or

(b) has a policy of qualifying insurance from the ARP which ceases before the end of the indemnity period including where the firm ceases to be an eligible firm or because it cancels the ARP policy before the end of the indemnity period because it has obtained a policy of qualifying insurance outside the ARP,

the ARP premium or ARP default premium payable in accordance with Part 1 of this Appendix shall, in respect of paragraph (a), be calculated or, in respect of paragraph (b), be re-calculated in proportion to the part of the indemnity period for which the firm obtains cover from the ARP on the basis of the formula:

## SRA Indemnity Insurance Rules 2013 - Appendix 2

where:

~~P is the annual ARP premium or ARP default premium (as the case may be) calculated for the whole of the indemnity period;~~

~~N is the number of days during the policy period (inclusive of the first and last day of the policy period); and~~

~~Y is 365.~~

~~Subject to paragraph 1.10, in the case of a firm to which paragraph 1.7(b) is applicable, a return premium shall be due to the firm concerned where the recalculated ARP premium or ARP default premium in respect of that firm is less than the ARP premium or ARP default premium paid by the firm, and the return premium shall be equal to the amount of that excess (if any). The ARP manager shall rebate the amount of the return premium to the firm.~~

~~However, there shall be no return premium due to the insured firm in the event that any claims, or circumstances that may give rise to claims, have been notified to the ARP manager during the policy period concerned. Furthermore, in the event that the ARP insurers are called upon to deal with a claim that was first made against the insured firm during the policy period concerned, but which claim the insured firm failed to notify to the ARP manager, the amount of the return premium shall be repaid to the ARP manager. The ARP manager may set off any return premium due to the insured firm against any part of the ARP premium which is due in respect of that insured firm but which remains unpaid.~~

#### ~~1.8 Definition of Gross Fees~~

~~For the purposes of the ARP rating, Gross Fees means all professional fees of the insured firm for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the insured firm and notarial fees where a solicitor notary operates a notarial practice in conjunction with a solicitor's practice, but excluding only:~~

- ~~(a) interest;~~
- ~~(b) the reimbursement of disbursements;~~
- ~~(c) any amount charged in respect of value added tax;~~
- ~~(d) remuneration derived from any office excluded from the definition of private practice by these Rules;~~
- ~~(e) dividends;~~
- ~~(f) rents received by the insured firm;~~
- ~~(g) income and capital profits from reserved funds established or other investments made by the insured firm.~~

~~Where the insured firm has been in existence for less than 12 months, the Gross Fees for ARP rating purposes shall be the insured firm's best estimate of the Gross Fees likely to be received during its first 12 months of trading. However, where the expiry date of the indemnity period precedes the completion date of the first 12 months of trading, the Gross Fees for ARP rating purposes shall be the insured firm's best estimate of the Gross Fees likely to be received during the period commencing with the starting date of the practice and ending with the expiry date of the indemnity period.~~

~~In the event that the estimated amount of Gross Fees differs from the actual amount of Gross Fees for the relevant period, the ARP premium shall be adjusted by reference to the actual amount of Gross Fees.~~

#### ~~1.9 Premium payment~~

## SRA Indemnity Insurance Rules 2013 - Appendix 2

~~The ARP premium shall be paid to the ARP manager within 30 days of such premium being notified to the insured firm by the ARP manager.~~

#### ~~1.10 Run-off premium~~

~~If an insured firm ceases to carry on a practice during the course of any indemnity period in circumstances where the ARP is required to provide run-off cover in respect of that insured firm under the terms of an ARP policy issued to that insured firm, no return premium shall be payable to that insured firm in respect of that ARP policy.~~

~~In addition, in such circumstances the insured firm and every principal of that insured firm (including, for these purposes, every person held out as a partner of a sole practitioner) shall be required to pay to the ARP an additional premium equal to:~~

- ~~• 12/13 of the full annual ARP premium (or, if applicable, the full annual ARP default premium) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that insured firm in relation to the last indemnity period for which such premium was payable, where such indemnity period was the period from 1 September 2003 to 30 September 2004; or~~
- ~~• 100 per cent of the full annual ARP premium (or, if applicable, the full annual ARP default premium) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that insured firm in relation to the last indemnity period for which such premium was payable or would have been payable had the insured firm participated in the ARP for the whole of that indemnity period, in the case of any other indemnity period.~~

~~Such additional premium shall be payable to the ARP manager within 30 days of such premium being notified to the insured firm by the ARP manager.~~

#### ~~1.11 Suspended Practices~~

~~If:~~

- ~~• an insured firm ceases to carry on a practice during the course of any indemnity period in circumstances where the ARP is required to provide run-off cover in respect of that insured firm under the terms of an ARP policy issued to that insured firm; and~~
- ~~• that insured firm's practice subsequently restarts; and~~
- ~~• the ARP manager agrees to cancel such run-off cover~~

~~the insured firm shall be entitled to such reimbursement of premium (if any), as the ARP manager considers appropriate.~~

~~If, in addition, the ARP manager agrees to provide continuing cover in accordance with paragraph 5.7(b)(ii) of the MTC, the insured firm and every principal of that insured firm (including, for these purposes, every person held out as a partner of a sole practitioner) shall be liable to pay such additional premium (if any) as the ARP manager considers appropriate.~~

#### ~~1.12 Self-Insured excesses for 2012/2013~~

~~The self-insured excess for each and every claim shall be calculated by multiplying the relevant number of principals by £4,500, subject to a maximum of £225,000 each claim. The relevant number of principals is the number of principals (including, for these purposes, every person held out as a partner of a sole practitioner) as at the inception date of the policy.~~

## ~~2 — Method for calculation of the ARP default premium~~

~~The ARP default premium shall be an amount equal to the ARP premium calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.~~

## ~~3 — Method for calculation of the ARP run-off premium~~

~~The ARP run-off premium shall be an amount equal to  $A + B - C$ , where:~~

~~**A** = The amount that would have been payable as the ARP default premium calculated in accordance with Part 2 above in relation to each indemnity period in which the firm has failed (whether for the whole of any part thereof) to obtain qualifying insurance prior to it becoming a run-off firm (including the indemnity period in which it ceased to practise)~~

~~**B** = A further amount equal to that which would have been payable as the ARP default premium calculated in accordance with Part 2 above (excluding any reduction under Part 1 paragraph 1.7) in relation to the indemnity period during which the firm ceased to practise~~

~~**C** = Any sum due under Rule 15.2.~~

~~Commentary: In respect of A, the ARP default premium is calculated for the actual period during which the firm has practised whilst uninsured. The calculation shall be undertaken on an annual basis for each indemnity period in which the firm failed to obtain qualifying insurance subject to a pro rata reduction (pursuant to Part 1 paragraph 1.7) for any part of each such indemnity period for which the firm obtained qualifying insurance.~~

~~————— In respect of B, the ARP default premium is calculated on an annual basis for the whole of the indemnity period in which the firm ceased practise irrespective of whether the firm obtained qualifying insurance for any part of that indemnity period. [\[Deleted\]](#)~~

### 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.

## SRA Indemnity Insurance Rules 2013 - Appendix 3

- (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 earlier of:~~

~~(a) 30 September 2013; or~~

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~~2~~<sup>3</sup>.

- 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 ~~qualifying~~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 ~~qualifying~~participating *insurer*.

SRA Indemnity Insurance Rules 2013 - Appendix 4

**Appendix 4 [Deleted]**



## **[Draft] SRA Authorisation, Practising and Handbook Glossary (Amendment) Rules [2013]**

Rules dated [date of LSB approval to be inserted] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 13, 13ZA, 31, 79 and 80 of, and paragraph 6B of Schedule 1 to, the Solicitors Act 1974 and sections 9 and 9A of, and paragraphs 14A, 14B and 32 to 34 of Schedule 2 to, the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990 and section 83 of, and 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.

### **Rule 1**

The SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 shall be amended as follows:

(a) insert Rule 8.11 as follows:

"8.11 Condition relating to the cessation period for indemnity purposes

(a) When an *authorised body* becomes subject to cover under the *cessation period*, it must immediately, and for the duration of the *cessation period*, desist from carrying out any *legal activities*, save that it may undertake work required to discharge its obligations within the scope of *existing instructions*, or which is necessary in connection with the discharge of such obligations.";

(b) in Guidance note (xv)(a) to Rule 8, replace "." with ";" at the end of (E) and insert:

"(F) Rule 17.3 of the SRA Indemnity Insurance Rules 2013 or any subsequent rules thereto."

### **Rule 2**

The SRA Practising Regulations 2011 shall be amended as follows:

(a) insert regulation 4.15 as follows:

"4.15 Condition relating to the cessation period for indemnity purposes

(a) When a *recognised sole practitioner's firm* becomes subject to cover under the *cessation period*, it must immediately, and for the duration of the *cessation period*, desist from carrying out any *legal activities*, save that it may undertake work required to discharge its obligations within the scope of *existing instructions*, or which is necessary in connection with the discharge of such obligations.";

- (b) in Guidance note (xii)(a) to regulation 4, replace "." with ";" at the end of (D) and insert:

"(E) Rule 17.3 of the SRA Indemnity Insurance Rules 2013 or any subsequent rules thereto."

### Rule 3

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) replace the definition of "**ARP**" with:

**"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 in the SRA Indemnity Insurance Rules 2012 (and prior variations thereof).";

- (b) delete the definition of "**ARP policy**";
- (c) delete the definition of "**ARP premium**";
- (d) delete the definition of "**ARP run-off policy**";
- (e) delete the definition of "**ARP run-off premium**";
- (f) replace the definition of "**cessation period**" with:

**"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 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.";
- (g) in the definition of "**difference in conditions policy**", replace "*qualifying insurers*" with "*participating insurers*";
- (h) delete the definition of "**eligible firm**";
- (i) replace the definition of "**extended indemnity period**" with:

**" 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.";
- (j) delete the definition of **"firm in default"**;
  - (k) in the definition of **"insolvency event"**, replace "*qualifying insurer*" with "*participating insurer*", and replace "*qualifying insurer's*" with "*participating insurer's*";
  - (l) after the definition of **"parent training establishment"**, insert:

**"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.";

- (m) delete the definition of **"period of default"**;
- (n) replace the definition of **"policy"** with:

**"policy**

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

- (o) in the definition of **"policy default"**:
  - (i) in paragraph (i)(A) delete "(including without limitation any payment due under Rule 15.1 of those Rules)",
  - (ii) replace paragraphs (i)(B) and (C) with:

"(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*,";

(p) replace the definition of "**policy period**" with:

**"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*.";

(q) delete the definition of "**qualifying insurer**";

(r) delete the definition of "**qualifying insurer's agreement**";

(s) in the definition of "**run-off firm**", replace "*qualifying insurer*" with "*participating insurer*";

(t) in the definition of "**SIIR**", after "2011" insert "to 2012,";

(u) delete the definition of "**special measures**";

(v) in the definition of "**SRA Indemnity Insurance Rules**", replace "2012" with "2013"; and

(w) delete the definition of "**successor firm**".

**Rule 4**

These amendment rules shall come into force on [1 October 2013].



## SRA financial protection policy statement

We are currently consulting on the implementation of this policy for October 2012. [Read more](#)

19 April 2011

The statement below was approved by the SRA Board on 13 April 2011.

### Introduction and purpose

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- 1 This statement sets out the SRA's policy for client financial protection for the period to 2014. It covers
  - o changes that will be made to the PII requirements for the 2011/12 indemnity year,
  - o changes that will be made to the PII requirements for the 2012/13 and 2013/14 indemnity years subject to further discussion and consultation on a number of detailed issues,
  - o changes to be considered to the SRA's Compensation Fund arrangements, and
  - o work that will be undertaken by the SRA in other areas of its responsibilities which have a direct bearing in the arrangements for client financial protection.
  
- 2 These decisions have been reached following the independent review of client financial protection undertaken for the SRA by Charles River Associates (CRA) in 2010 and the extensive consultation undertaken by the SRA on its own client financial protection reform proposals published in December 2010.
  
- 3 The primary purpose of these arrangements is client protection. However, they affect a wide range of stakeholders, including authorised bodies, individual solicitors and insurers—and it is important that the SRA provides clarity about the development of these arrangements over the next three years in order to allow all stakeholders to plan and make robust business decisions.
  
- 4 In reaching these decisions, the SRA has had regard to the statutory requirements set out in the Legal Services Act 2007 (LSA). These are as set out below.

S.28 of the LSA provides,



- (1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.
- (2) The approved regulator must, so far as is reasonably practicable, act in a way
  - (a) which is compatible with the regulatory objectives, and
  - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.
  
- (3) The approved regulator must have regard to
  - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and

(b) any other principle appearing to it to represent the best regulatory practice.

The regulatory objectives are set out in s.1 LSA,



(1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of

- (a) protecting and promoting the public interest
- (b) supporting the constitutional principle of the rule of law
- (c) improving access to justice
- (d) protecting and promoting the interests of consumers
- (e) promoting competition in the provision of services within subsection (2)
- (f) encouraging an independent, strong, diverse and effective legal profession
- (g) increasing public understanding of the citizen's legal rights and duties, and
- (h) promoting and maintaining adherence to the professional principles.

(2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).

(3) The "professional principles" are

- (a) that authorised persons should act with independence and integrity
- (b) that authorised persons should maintain proper standards of work
- (c) that authorised persons should act in the best interests of their clients
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential

(4) In this section "authorised persons" means authorised persons in relation to activities which are reserved legal activities.

We have also to have regard to our statutory duties under the equalities legislation and an equality impact assessment (EIA) is published alongside this statement.

- 5 The SRA's client financial protection arrangements have two elements:
  - o a compulsory requirement on authorised bodies to have Professional Indemnity Insurance (PII) which meets minimum terms set by the SRA to ensure that client claims in respect of negligence and, in certain circumstances, dishonesty can be met. These arrangements also protect clients in the same circumstances where the body against which a claim lies has not obtained the required PII;
  - o coverage for all authorised bodies by a Compensation Fund (contributions to which are collected from recognised bodies and practising solicitors) which has the discretion to compensate clients who can demonstrate hardship from a body's failure to account for client money or from fraud.
  
- 6 This paper addresses both of these elements in turn and sets out the decisions we have reached on each as against the statutory requirements on the SRA set out above. It is important, throughout, to note that both sets of arrangements provide redress when something has gone wrong. Alongside the reforms set out in this statement the

SRA is implementing major reforms to the way it regulates which we believe will further address and reduce the causes of claims arising in the first place – an outcome immeasurably better for clients than receiving recompense at some later date.

### Professional Indemnity Insurance

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#### Available mechanisms

- 7 There are only three mechanisms through which the SRA can ensure that a scheme of compulsory indemnity insurance is in place in the public interest and in the interests of consumers. These are:
- open market insurance obtained through a master policy, covering all authorised bodies, the cost of which is met through a levy on all authorised bodies (referred to as master policy),
  - a mutual indemnity fund, again, with the cost met through a levy on all authorised bodies (referred to as indemnity fund), or
  - an open-market scheme where individual authorised bodies procure their own PII from the insurance companies in the open-market (referred to as open-market).

#### Decision to retain open-market approach and risks to its continued viability

- 8 For the reasons that have been set out in the CRA Report, the SRA's December consultation and the SRA's response to the consultation, our decision is that the open-market system best meets the regulatory objectives. All systems are capable of providing the required level of client protection. However, the open-market system provides PII
- at a lower overall cost to authorised bodies (with consequential benefits to the consumers of legal services),
  - in a way which supports good risk identification and management in individual authorised bodies, and
  - in such a way that the cost of PII to each individual authorised body is related to the level of insurance risk they present.

The alternative approaches (master policy and indemnity fund) do not have these characteristics.

- 9 In order for the SRA to mandate the open-market approach it is necessary for us to be confident that there will be a robust and competitive market willing to provide PII to solicitors on the minimum terms deemed necessary by the SRA to ensure the appropriate level of client protection. If such a market does not exist, it would be necessary to switch to one of the two alternative approaches; notwithstanding the fact that such schemes do not have the benefits identified at paragraph 8 above, and the fact that there have been significant difficulties with the operation of such schemes in the past.
- 10 From the SRA's and CRA's analysis, from the responses the SRA has received to its consultation and from direct engagement with stakeholders, the SRA has decided that the current arrangements specified by the SRA are causing significant problems in the operation of the open-market approach. The current arrangements are leading to unwillingness on the part of insurers to provide PII, or to restrict their participation to a limited volume of business or only to certain types of firm. For many authorised bodies there is effectively a choice between only two or three insurers. The indications are that, without change in the arrangements, this situation will not improve and will, in fact deteriorate further; probably to the point where there is no alternative but to revert to a master policy or indemnity fund system due to a lack of open-market provision. Given this, the SRA has decided that changes to the arrangements are essential not only to improve the competitiveness of the open-market arrangement but also to ensure its continuation.

- 11 There are a number of factors that are causing problems. These are problems which impact directly on the insurers, although the results of these problems (because they impact on the availability and cost of insurance) manifest themselves in problems for authorised bodies and would ultimately, if unresolved, manifest themselves in problems for clients wishing to make a claim. This consequential impact, through firms onto consumers who require the protection afforded by PII is of the greatest concern to the SRA.
- 12 The most significant problems in the current arrangements are:
- the cost to insurers of the ARP (arising from cost associated with ARP policies of qualifying insurance, the provision of run-off cover for firms that closed whilst in the ARP and claims in respect of firms without qualifying insurance),
  - the unpredictability of the cost of the ARP,
  - the unlimited liability qualifying insurers assume for the ARP, including costs that should have been met by any other qualifying insurer in the circumstance of that insurer becoming insolvent, and
  - the scope of the minimum terms upon which all qualifying insurance must be provided, including
    - the fact that the scope of cover cannot be varied, i.e. in terms of the type of business and clients covered, even if this might be desirable in individual cases for both insurer and insured. As insurers can only provide insurance on the basis of the full minimum terms and conditions (MTC) this means that some authorised bodies will not be able to obtain cover at all, and means insurers will have to meet claims for work of the type that an authorised body might have declared that it was not undertaking;
    - insurers are effectively underwriting losses arising from dishonesty within an authorised body, even if that dishonesty was undertaken by the insured owners/managers, as long as there is at least one innocent insured owner/manager. Claims arising from dishonesty related to property transactions have become a major element of claims being met by insurers; and
    - insurers are not permitted to cancel or revoke policies on the basis of fraud or misrepresentation in the information provided in proposal forms or for non-payment of premiums.
- 13 The current arrangements provide comprehensive protection to clients (and any revised arrangements must maintain this) and have the benefit of simplicity, in that all authorised bodies have the same minimum level of PII cover. In addition, they place the liability for certain types of loss on insurers rather than, as might be the case, the Compensation Fund. Despite the apparent benefit to recognised bodies as a result of some types of claim being paid by insurers rather than by the Compensation Fund, it is important to note that, ultimately, all claims have eventually to be borne by authorised bodies (either directly through the Compensation Fund or indirectly through the level of PII premiums being paid to insurers). As set out in the SRA's consultation paper, it is economically less efficient for claims that might be met by the Compensation Fund to be met indirectly by insurers as PII premiums attract brokers' fees and insurance premium tax; whereas payments to the Compensation Fund do not.
- 14 As we have identified (at para. 10 above) the SRA's clear view is that, collectively, the issues set out at paragraph 12 are constraining the proper operation of the open-market system for PII. If unchanged, the open-market system will become unviable through further withdrawals by insurers from the market, a lack of new entrants and the artificial constraint by existing insurers willing to remain in the market of the volume of business and the types of firm they are prepared to underwrite. Much of this is driven by a business need to limit exposure to the costs of the ARP.
- 15 This move to unviability will be accelerated by the implementation by the FSA at the beginning of 2013 by the pan-



European Solvency II requirements. The Solvency II requirements may well make the continuation of the ARP in its current form unviable for qualifying insurers. The fact that insurers' liabilities for the ARP are open-ended, unquantifiable, are not in their direct control and are unpredictable may well restrict the management model they will be able to adopt against the Solvency II requirements, with the result that they would have to make far higher capital provisions for the ARP. In our view this may well lead current insurers to exit the solicitor PII market in order to transfer capacity to less capital-hungry markets and, for the same reason, discourage new entrants.

### **Changes necessary to maintain viable open-market arrangements and improve availability and competition within them**

- 16 Given the above, the SRA has considered the changes to the current arrangements that are available to put the open-market system on to a sustainable basis for the medium-to-long term in the interests of clients and in the context of the regulatory objectives to which the SRA must have regard. The SRA has considered the range of factors that might, either in isolation or together, be varied such as to achieve both the necessary level of client protection and a long-term viable open-market PII system. This consideration has included:
- the continuation of the ARP in its current or some modified form,
  - the funding mechanism for the ARP, should it continue;
  - the scope and variability of client and activity coverage,
  - the scope of coverage for claims arising from fraud or dishonesty, and
  - the inability of insurers to cancel or revoke policies for misrepresentation or non-payment of premiums.
- 17 In the light of this analysis, considering all of the review material (including CRA's report and the responses received to the consultation) and the discussions we have undertaken with stakeholders, the SRA has decided that the priority issue to be addressed is the ARP. This is the single issue that is causing the greatest level of distortion in the operation of the open-market PII arrangements and which must be addressed before the Solvency II provisions are implemented in early 2013. The majority of responses to our consultation argued in favour of closing the ARP, including insurers and the Law Society.
- 18 In taking this view, and before setting out the details of how the SRA intends to take this issue forward, it is important to address two issues that were raised by some respondents to the consultation.
- 19 It has been argued that, without an ARP, it is insurers who decide whether a firm should be allowed to practise rather than the SRA and that this is inappropriate. The SRA does not agree with this view. Any regulated business must meet a wide range of regulatory requirements and normal economic business requirements if it is to continue to operate. The SRA's remit in this area is to set out the requirements of practice to ensure that clients are financially protected. It is the firm's responsibility to ensure that it can meet those requirements as well as meeting the normal requirements of business. Should a firm not be able to obtain PII then, in the SRA's view, it is not a regulatory responsibility to create and manage alternative PII arrangements to enable a firm to stay in business. By analogy, for a firm to operate it needs to obtain banking and finance facilities. Should no bank be willing to take a firm on, it is not the regulator's role to step in and provide finance. The SRA is satisfied that it is consistent with its role and with the regulatory objectives to require PII at the level necessary to ensure client protection without operating an "insurer of last resort" mechanism provided that clients are properly protected.
- 20 As shown by the EIA to be published as part of our response to consultation, it is clear that BME firms are over-represented in the ARP. The SRA Board has had regard to this issue in reaching its decisions. It is important to note that the ARP does not provide long-term PII for firms that are unable to obtain open-market cover, but provides insurance for one year in order

- to ensure clients are protected from the disorderly closure of a firm in a matter of days (following the point at which it is clear to the firm that insurance cannot be obtained), and
  - to give time for the firm to plan and accomplish orderly closure or to obtain cover on the open market.
- 21 The statistics show that majority BME owned and controlled firms are disproportionately represented in the ARP when compared to majority white owned and controlled firms. What is not clear from the statistics, or from the other information available, are the reasons for these disproportionate outcomes. Despite this having been an issue of considerable attention for the SRA, firms and representative bodies over the past two years, no instance of direct discrimination on the part of an insurer has been identified to the SRA.
- 22 The generally accepted view is that the operation of the underwriting criteria used by insurers is resulting in indirect discrimination against BME firms. At one level, it is relatively easy to see how this might be the case. We know that BME firms are, for example, proportionately over-represented in the population of small firms, concentrated in major conurbations and are more likely to undertake certain categories of business. If underwriting criteria categorise such factors as being of relatively higher risk (than, in these cases, large firms, firms practising outside of major conurbations and those undertaking other areas of business) then PII will be relatively more costly to such firms or, on occasion, unavailable.
- 23 Where such indirect discrimination arises as a result of the operation of underwriting criteria, it is for each insurer to demonstrate that it has had regard to the impact of the criteria in the context of its duties under the law and is able to justify them notwithstanding any indirect discriminatory effect that might result from their operation. The ABI is working with qualifying insurers on this issue and they are liaising with their own regulator, the FSA, and the EHRC in doing so. They are also engaged with the SRA and the Law Society as they progress this work. The SRA will continue to provide whatever assistance it can to the ABI and insurers on this issue and encourage them to complete it and publish the outcome promptly and to take any action required as a result.
- 24 The SRA's view is that the maintenance of the ARP in its current form is not the correct response to the current disproportionality in the ARP as, notwithstanding the other factors which we accept as requiring its fundamental reform, its maintenance does not represent the best policy outcome for BME firms.
- 25 Alongside the conclusion of the work being undertaken by insurers and the ABI on the risk factors used in underwriting, the great majority of BME firms are likely to be best served by a more open and competitive market for PII so that they can obtain open-market cover at appropriate premiums (ARP premiums are relatively higher than open-market premiums). Statistically, BME firms are disproportionately in the small firm category (one to three partners). It is this category of firms for which choice of insurer is most constrained. At present there are only three insurers providing policies for this type of firm, and it is in this category where a future constriction of the market (if it remains unreformed by the SRA) is likely to be felt soonest. Given this, the reforms we are planning to the ARP and other aspects of the PII arrangements are most likely to benefit small firms by the introduction of increased capacity and competition in this market sector.

### **New open-market arrangements**

- 26 The SRA is setting out on a programme of reform which will address the issues arising from the ARP between October 2011 and October 2013. This will involve the ending of the ARP at October 2013 and its replacement with a mechanism to enable firms unable to obtain open-market cover to close in an orderly fashion and to ensure clients are protected. Our view is that the implementation of these arrangements will create conditions that increase the likelihood of existing insurers remaining in this market, the number of new insurers entering the market and the level of competition for business between them.

- 27 Managing the transition from the current arrangements to the new ones will require us to maintain the single renewal date and the indemnity year (1 October to 30 September) approach that we have now. However, we intend to remove the annual renewal date once the new arrangements are in place in 2013.
- 28 Our plans for the new scheme will operate from October 2013 but be foreshadowed in the Solicitors Indemnity Insurance Rules (SIIR) and Qualifying Insurers Agreement (QIA) which will come into force in October 2012. These plans draw heavily on proposals made by the Law Society in the course of the consultation period and we are grateful to the Law Society for its work and assistance on this issue. These arrangements, which we refer to as the Extended Policy Period (EPP), will mean that when insurers and authorised bodies enter into annual PII contracts in October 2012 they will do so on terms that will enable the new arrangements to operate in October 2013.
- 29 In September 2013, any authorised body that is unable to obtain new PII for the period from 1 October 2013 will not have the option of entering the ARP as the ARP will at that point cease to be a provider of policies of qualifying insurance. Instead, the authorised body will have the option of triggering a policy extension with its existing insurer for a period of 90 days (with an additional premium payable based, pro rata, on the previous year's premium).
- 30 During the first 30 days of this period the authorised body will be able to continue to take new instructions and, if it is able to obtain open-market insurance, back date the cover to 1 October. In the second 60 days, the firm will not be permitted to take new instructions and will be expected to focus on achieving an orderly close down within that period.
- 31 Throughout this period, the previous year's insurer will provide cover for work undertaken under the policy extension. If the authorised body is unable to obtain alternative PII cover within this 90 day period and closes, run-off cover will be provided by this same insurer for the six year period commencing on the date (in this instance 30 September) on which the original policy expired. The authorised body will be charged a premium for this run-off cover as is already the case.
- 32 These arrangements will achieve the policy objective of ending the ARP as a provider of policies of qualifying insurance, continue to protect clients (from sudden and disorderly closure, possibly with no PII cover in place) and provide authorised bodies with a period of 90 days following the end of an insurance policy to either obtain insurance or close in an orderly fashion.
- 33 In many respects these arrangements will not be wholly new for insurers to manage as under the current arrangements they are obliged to provide run-off cover to any firm they insure and which closes during that period of insurance. However, insurers will now need to take account of the fact that should an insured authorised body be unable to obtain insurance with a new insurer at the end of the period of insurance, the insurer will have to provide run-off cover as there will be no possibility of the authorised firm entering the ARP even for a very limited period, and therefore triggering run-off with the ARP instead. Although therefore this situation will not be wholly new to insurers, it will inevitably lead them to review their risk assessment and underwriting criteria.
- 34 In the proposals published by the Law Society as a part of its consultation response it advocated that insurers provide authorised firms with information—up to 90 days before the end of a policy of insurance—on whether they were prepared to renew the insurance and if so, on what terms. The SRA agrees that, in moving to this system, it would assist its operation if insured firms were clear as early as possible about whether their existing insurer was willing to renew their policy. Having considered the proposal and discussed with insurers we believe that this issue requires further discussion. Therefore we intend to discuss and consult further on this issue before reaching a final decision on the detailed requirements that will be implemented via the SIIR and QIA for 2012/13.
- 35 With the implementation of these plans, there would remain just one other role for the ARP that is unaffected. This is the role played by the ARP in meeting claims made against "non-applied" firms, i.e. authorised bodies that have failed to obtain the required PII or, indeed, non-authorised bodies purporting to be authorised bodies. At present, the

qualifying insurers meet the costs of such claims through the ARP and the extent of that cover is the same as the MTC applying to properly insured and authorised bodies. In 2008/09 the cost of meeting these claims came to £2.4m.

36 It is our intention to change these arrangements for the following reasons:

- We consider that the scope of cover for these claims is too wide. For example, for sophisticated users of legal services, even the most cursory checks with a "firm" would be sufficient to establish that the "firm" was both authorised by the SRA and insured. However, we accept that for ordinary members of the public it is not necessarily the case that they would understand the need for, and be able to make, such checks.
- It is not apparent that paying these claims should properly be considered to be insurance payments rather than compensation for some wider regulatory failure (e.g. to ensure that an authorised body had obtained the required PII), or dishonesty (i.e. a decision by a solicitor to hold themselves out to be an authorised body or as having PII when they did not).
- When we remove the remaining functions of the ARP it would be disproportionate to maintain and resource the infrastructure necessary to manage an ARP (including assessing qualifying insurers' market share for the purpose of apportioning ARP costs) to meet such a low level of claims.

37 For these reasons we will review the scope of this cover and consult on transferring the responsibility for meeting such claims to the Compensation Fund prior to the 2012/13 indemnity year.

38 We have referred (at para. 28 above) to the need for the arrangements that will apply in October 2013, to be foreshadowed by specific provisions in the SIIR and QIA for 2012/13. In reaching the views the SRA has about the long-term arrangements that should apply from that point we have considered the immediate changes to the arrangements that should apply in 2011/12 in the context of our consultation on our specific proposals for that year set out in our consultation paper and the responses made to it. We have also looked backwards from October 2013 to consider how a smooth transition to the new arrangements can best be achieved. As a result we have decided on a transition plan covering the periods 2011/12, 2012/13 and 2013/14. This plan is consistent with both

- the firm decisions the SRA has made (having regard to the outcome of consultation) for 2011/12 which we consider both to be justified in their own right and consistent with the transition to the 2013 arrangements, and
- a managed transition that will enable the smooth implementation of the 2013 arrangements whilst maintaining a viable open-market insurance scheme throughout this period.

39 Attached at Annex A is a diagram that summarises the transition period. Set out below are details of the system that will operate at various points in the transition and the areas on which we will be undertaking further analysis and consultation as the transition progresses.

### **Transition—2011/12 indemnity year**

40 In the light of the consultation, the responses received and our consideration and analysis of those responses the SRA has decided to make the following changes to the indemnity insurance arrangements for 2011/12. The analysis underpinning these decisions and the rationale for them are set out more fully in the separate consultation response document. The SRA is satisfied that these changes, justified on their own merits, are also consistent with the transition to the 2013 arrangements. The changes are:

- a reduction in the permitted period in the ARP from 12 months to six months. This decision is necessary to control and reduce the cost of the ARP, increase our ability to close firms that we regard as high

regulatory risk (we rate fifty per cent of ARP firms as high regulatory risk) and provide a transition path towards 2013. In addition it is important to provide real clarity to all stakeholders that the market problems arising from the ARP are recognised and are being addressed. This change will not affect the key purpose of the ARP, i.e. client protection;

- the introduction of requirements on firms in the ARP to plan and implement arrangements to address the issues that have led to a failure to obtain open-market cover, and to obtain such cover, or to close in an orderly manner;
- removing the liability on qualifying insurers to meet the ARP liabilities of any other qualifying insurer becoming insolvent;
- changes to the qualifying insurers agreement to clarify the reporting responsibilities of qualifying insurers to the SRA, and
- ensuring the SRA has the ability to make public the insurer providing minimum terms cover to any firm.

41 The basis on which the SRA has reached these decisions is set out fully in its response to the December consultation. In addition, they are consistent with the changes planned for 2012/13 and 2013/14.

42 Of the other two significant changes proposed for October 2011 in the consultation paper, the SRA will not be proceeding with these at this stage. We plan, however, to remove the compulsory single renewal date from October 2013, once this transition programme has been implemented.

43 With regard to the permitted exclusion from the MTC for work done for financial institutions we have set out in section 4 of this paper a wider range of work that the SRA will be undertaking including our review of the regulation of conveyancing and the holding of client money. We plan to complete this wider review work, which will address the reasons why property transactions give rise to such a high proportion of claims arising from negligence and dishonesty and the regulatory steps that might be taken to address this, before returning to the scope of insurance coverage. There remain strong arguments for permitting greater flexibility for authorised bodies and insurers in the insurance arrangements and we will continue to examine this matter, although given the focus on the reform of the ARP we would not expect to be in a position to implement any such changes before 2014.

### **Transition—2012/13 indemnity year**

44 The detail of the SIIR and QIA for the 2012/13 indemnity year will be the subject of a consultation process that will commence in mid 2011. The 2012/13 year is the earliest point at which we can put in place the arrangements necessary to replace the ARP with the EPP provisions at the end of the year. The QIA and SIIR will need to make provision for:

- any requirements on an insurer to provide firms that they insure with a decision on whether they will renew the existing insurance, and the terms on which this will be offered, at a set point before the current insurance ends. In their proposals, the Law Society suggested a three-month period but insurers have indicated that they believe this to be impractically long. The SRA will need to undertake further discussions with stakeholders on this issue.
- the period for which an insurer is obliged to extend a 2012/13 insurance policy if an insured authorised body is unable to obtain PII for October 2013, the terms applying to that extension, the premium payable and the scope of the work to be covered.

45 As the new EPP provisions will not come into being until October 2013, we have had to consider the arrangements that should apply for the ARP in 2012/13. Our view is that entry into the ARP should be available to firms in October 2012—even though there was a strong view in the consultation responses in favoured of ending the ARP. In consultation responses, some have made the case for further restrictions to be placed on ARP, for example in terms

- of the scope of work that they might be permitted to undertake or restrictions on their ability to hold client money. As part of the consultation on the detail of the arrangements to apply in 2012/13 we will consider these issues further.
- 46 Given our assessment of the health of the open-market insurance arrangements, there are risks associated with maintaining the ARP as a provider of policies of qualifying insurance in 2012/13. However, the timetable necessary to implement these changes and to enable all stakeholders, including solicitors and insurers, an appropriate period of time to plan for their implementation means that the timetable is unavoidable.
- 47 For insurers, the nature of the risks they will be assuming and pricing under the EPP arrangements will be different than for the current arrangements. Therefore, there needs to be a full year's lead in to them (i.e. when insuring a firm in October 2012, the insurer will be doing so on the basis that the EPP arrangements will apply at the end of that year).
- 48 For solicitors, there will need to be a greater focus on risk management and control and the management of the solicitor/insurer relationship as a failure to obtain open-market PII will result in a movement into the EPP mechanism rather than an ARP.
- 49 As has been set out above, the need to maintain the ARP as a provider of policies of qualifying insurance is inevitable given the transition timetable but this presents risks to the continuation of a competitive insurance market. These risks are heightened by the planned implementation in January 2013 of the Solvency II requirements.
- 50 Given this, we plan to mitigate these risks in two ways.
- 51 First, we would intend to remove one of the elements of client protection currently provided by the ARP and provide for its coverage by the Compensation Fund which, in any event, is the more appropriate source of cover. This is the mechanism under which the ARP pays for claims made against uninsured firms on the same basis as if they were insured under the MTC. In making this change, on which we will consult, we will wish to examine the scope of the coverage provided by this mechanism. At present claims are paid in respect of authorised firms that have not taken out insurance and non-authorised firms purporting to be firms of solicitors. Given this, it is not apparent that all claims should automatically be paid as against the MTC provisions and it is possible that a discretionary system, as applying in the Compensation Fund might be more appropriate.
- 52 In addition, were this change to be implemented, the replacement of the ARP with the EPP arrangements, would, from 2013/14 remove the need to construct and manage a mechanism to assess each qualifying insurer's market share in order to apportion ARP funding. This would remove a current incentive on insurers to constrain or manage their market share which, we believe restricts and distorts competition to the disadvantage of authorised bodies and their clients.
- 53 The second significant change we plan for the 2012/13 ARP is the mechanism through which any shortfall (of premiums paid as against claims made) is met. At present this is met by the qualifying insurers. As we have set out above, we believe that we will not maintain a viable and competitive open-market system of insurance if this continues, particularly once the requirements of Solvency II are introduced at the beginning of 2013. For these reasons we plan that in 2012/13 the shortfall will be jointly funded by insurers and the profession. The detail of these arrangements will be covered in the forthcoming consultation. However, subject to that, our current view is that this will be done such that the first £10m of the shortfall is met by the profession, the next £10m by insurers (each in proportion to their market share) and that this layering should continue up to £50m. Any amount above that would be met by the qualifying insurers.
- 54 This arrangement will provide insurers, in 2012/13, with, in real terms, a capped liability for the ARP as at no point in its history, even in the years of heaviest claims (2008/09 and 2009/10) has the level of the shortfall exceeded £50m. The most significant variable in the total cost of ARP claims is the economic cycle and we entered the current cycle

(in terms of the value of claims) in 2008/09. By 2012/13 we would expect claim levels to have reduced significantly. This should enable qualifying insurers to better manage the issues arising for them from the ARP, including the implementation of Solvency II during this year; which will be the last ARP year.

- 55 Our intention is to use SIF to provide the profession's funding into the ARP. The current resources available to SIF mean that the first £10m of ARP liability could be met without any further contributions from regulated solicitors and bodies. Should claims the shortfall for the 2012/13 ARP exceed £20m, existing SIF resources will be able to meet some further level of claims, but the SRA may need to levy additional contributions.
- 56 During 2011 and into 2012 we will undertake detailed financial modelling work—in conjunction with qualifying insurers, the Law Society and SIF, in order to assess and prepare for the funding of the 2012/13 ARP as set out above.
- 57 On the basis of the above arrangements, we would expect to see the majority of current qualifying insurers continue in this market in 2012/13 and new entrants enter given that the issue of uncapped ARP liability would have been substantially addressed.

### Transition—2013/14 indemnity year

- 58 In this year firms will either have to obtain PII from a qualifying insurer, close immediately or trigger the EPP provisions with their existing insurer. There will be no ARP (although qualifying insurers will continue to pay money into the ARP to meet claims that were notified or made in previous years in which they were qualifying insurers).
- 59 The nature of the EPP will, as we have set out above, be the subject of further detailed consultation. However, at present our intention is that it will run for 90 days split into two periods. A firm will need to pay a pro rate premium to their existing insurer for this period of cover.
- 60 In the 0–30 day period firms will be able to continue to take on new clients and undertake all work whilst they continue to seek PII in the open-market. Should this be obtained, the firm will be able to backdate their new insurance to the date the previous insurance ended. In these circumstances the EPP premium paid by the firm would be refundable as the previous insurer would never have been on risk.
- 61 In the 31–90 day period, the firm would not be permitted to take on new work, but would be permitted, and insured to continue work for existing clients whilst winding down the practice. The firm would need to cease work and close (or have merged or been taken over by another firm) by day 91.
- 62 Run-off cover would then be required to be provided by the existing insurer for which a run-off premium would be payable. Our current view is that this run-off should extend for six years from the date of the end of the policy (not taking account of any EPP).
- 63 Alongside these arrangements, the SRA will be examining its approach to the supervision and regulation of firms in an EPP. For firms that are unable to obtain new insurance, our initial approach, through supervision, will be to work with the firm to facilitate orderly closure and the transfer of cases, to ensure clients are properly informed and to ensure the transfer of their matters to other firms. We would expect professional regulated individuals and firms to co-operate and, in accordance with their regulatory obligations, act in the best interests of their clients. However, we also need to ensure that we have the necessary powers available to ensure that EPP firms comply with the requirements and do not practice, uninsured, after day 90. We will be reviewing, and amending if necessary, our regulatory arrangements to ensure that this can be done.

### Compensation Fund

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- 64 In addressing the reform of client financial protection our primary focus has been on the PII arrangements as these have been in the most urgent need of review. Our work on the Compensation Fund arrangements has primarily been undertaken within the context of the introduction of OFR and the application to the LSB to become a licensing authority for ABS.
- 65 As a result of this, the only major change to the Compensation Fund arrangements that will be implemented in October 2011 is the extension of the Fund to cover ABS. However, the LSB has indicated that this approach will only be approved through to December 2012 without further review.
- 66 Given this, the consideration of the responses to consultation on this issue, and the intention, as set out at para. 37 above, to move claims in respect of unapplied firms to the Compensation Fund, our further work on the Fund in 2011 will look at
- o the continuation, post-December 2012, of a single Compensation Fund covering all SRA authorised bodies, and the alternatives to such an approach;
  - o the basis on which claims made against unapplied firms should be dealt with by the Compensation Fund and the scope of such payments in comparison to that currently provided through the ARP and that provided by the current provisions of the Fund, and
  - o the basis on which future, October 2012 onwards, contributions to the Fund should be assessed, including whether they should be more risk reflective.

## Wider areas of work

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### Conveyancing review

- 67 Throughout this review and the consultation we have been told by stakeholders that a focus on insurance and compensation to ensure that clients are protected is merely addressing the symptoms of the problem rather than the cause. We believe, for the reasons set out in this paper and elsewhere, that work on the financial protection arrangements was, and is, essential. However, we agree that further work is needed to prevent the causes of claims arising in the first place.
- 68 Even in a system with high professional and ethical standards, high levels of competence, excellent risk and business management and effective regulation, negligent actions will occur and clients will need to be protected financially through insurance. Insurers provide insurance on the basis that such claims will arise. However, many insurers that have responded to consultation have argued that much of their risk management and underwriting resource is now focused not on negligence but on dishonesty – either from within authorised bodies or through authorised bodies' risk management and controls systems being so weak as to allow them to become subject to the activities of dishonest third parties.
- 69 Overwhelmingly this has occurred in property work.
- 70 Given this we will be undertaking a fundamental review during the course of 2011 into our regulation of conveyancing and property transactions and the holding of client money. This review will seek to examine not only the activities of authorised bodies in property transactions but how they interact with other major stakeholders, including client purchasers, client lenders, surveyors and estate agents and insurers. It will be within the context of this understanding of how the system is operating (and might operate differently in the future) that we will examine our approach to regulating this key area of business.
- 71 As a part of this work we will be examining the arrangements for the holding of client money and the provision of undertakings by solicitors within the process. In respect of the former, we intend to examine the extent to which the



passing of client money through the solicitor remains necessary given the dramatic changes that have occurred in the banking system over the past ten years.

- 72 Within the SRA we will be examining whether our regulatory requirements and powers are appropriate to manage and reduce risk and whether our authorisation, supervision and enforcement approaches are as effective as they might be.
- 73 In this last respect we are already implementing significant changes to our approach to authorisation and supervision as a part of our implementation of OFR. Notwithstanding the planned review, we will be applying a far more rigorous authorisation test and process which, in our view, will prevent some of the types of dishonest behaviour seen in recent years. As a part of this programme we will be implementing a new conveyancing supervision and enforcement strategy in 2011, the details of which are being published alongside this policy statement.
- 74 Our work in this area will need to be highly collaborative, drawing on the information and experience available in the profession (through the Law Society), clients (such as lenders) and the insurers. We will wish to take account of wider developments in this area such as the establishment of the Society CQS and the lenders' developing approach to the risk management of their conveyancing panels.
- 75 We expect to publish full details of this review and commence discussions with stakeholders in May 2011.

### Further engagement and analysis of impacts

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- 76 Within this policy statement we have set out a programme of work in respect of PII and related issues that will be implemented over a three and a half year period. We have taken this approach because of a need to ensure a managed transition from the existing arrangements to the new and to provide clarity for all stakeholders on which they can plan and make business decisions.
- 77 Throughout this transition, and particularly at key stages in it, there will be further engagement with all stakeholders to develop the detail of new arrangements and to identify, discuss and, if necessary, address, the impacts that will arise. There will be further consultations on the arrangements for each of the indemnity years; 2012/13 and 2013/14.
- 78 In addition there will be further consultation on any changes to the Compensation Fund arrangements and regulatory changes flowing from the review of conveyancing and holding client money. Each of these consultations will be accompanied by draft Equality Impact Assessments and decisions made with due regard to the impact on equality as evidenced by the final EIAs.
- 79 Our engagement will extend more widely than the detail of the transition to the new PII arrangements. In particular we will continue to engage with insurers, the ABI and the groups representing BME lawyers, as the ABI and insurers work to demonstrate that underwriting criteria are justified as against the requirements of the equalities legislation. Our view is that clients, solicitors and authorised bodies are best served by a highly competitive open-market insurance system. This should particularly benefit small firms whose choice of insurer is currently relatively limited. However, it is important that insurers are able to demonstrate that the market is fair and open to all and that underwriting decisions are founded on objective and justifiable criteria.
- 80 Finally, we will continue to review the effectiveness of these arrangements in providing real protection to clients. As a public interest regulator, the interests of the public and the consumers of legal services are paramount. The success of the SRA's client financial protection arrangements has, ultimately, to be considered in terms of their impact on these groups. This extends past the immediate issue of whether their financial interests are protected but also to the secondary impact the arrangements have on the cost and accessibility of legal services.

**Annex A**

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[Download Annex A: Professional Indemnity Insurance Transition Plan \(PDF 1 page, 54K\)](#)

# Client financial protection review – report on consultation responses and SRA conclusions

April 2012

## 1. Introduction

- 1.1. As part of the review of client financial protection arrangements, a second consultation paper was issued on 25 October 2011 with a closing date of 17 January 2012. This paper summarises the key points emerging from the responses and sets out the SRA's conclusions.
- 1.2. This document should be read in conjunction with the [SRA's financial protection policy statement](#) which sets out the decisions reached by the SRA Board on changes to be made to these arrangements between October 2011 and October 2013.
- 1.3. The number of responses received to this consultation paper was 38. It should be noted that it appears that the representative of one market participant wrote to its clients to encourage members of the profession to disagree with one of the proposals made (a notice period of intention not to renew cover) and to support another proposal (to introduce a requirement for credit ratings). We believe this has generated a number of responses on these issues in the same terms as that advocated. A summary of overall results is shown in **Annex 1**.
- 1.4. In accordance with the SRA financial protection policy statement dated 19 April 2011 and the subsequent SRA financial protection review consultation, it has been proposed from 1 October 2013:
  - a) the Assigned Risks Pool (**ARP**) will cease to be a provider of insurance (save for in respect of run-off cover for those firms that closed whilst in the ARP);
  - b) the Qualifying Insurer last on risk (that is, for the immediately preceding indemnity period) will be required to provide extended policy coverage to the firm for a further period of 90 days, such period to allow the firm to either obtain a policy of qualifying insurance or to cease practise in an orderly fashion;
  - c) firms that are unable to obtain a policy of qualifying insurance before the end of the 90 day period must cease to practise;
  - d) the Qualifying Insurer last on risk must provide run-off cover to the firm for six years (the six-year period commencing at the end of the original policy period); and
  - e) the existing "side-arrangement", whereby coverage is provided to uninsured firms that have not applied or are not eligible to enter the ARP, will be

withdrawn with effect from 1 October 2012, and instead claims arising from the operation of such firms will be met by the Compensation Fund.

## 2. Overall Approach

### Purpose and scope of the consultation

2.1. The April 2011 Policy Statement set out the steps leading to the changes to the indemnity insurance and compensation arrangements. The main proposed changes are:

- a) the closing of the ARP as a provider of policies of qualifying insurance from 30 September 2013 (with the exception of the continued provision of run-off cover incepted before that date);
- b) the introduction from October 2012, of a requirement that all policies of qualifying insurance make provision for the extension by 90 days at the end of insurance period if the insured firm has not taken out a new policy of qualifying insurance;
- c) changes to the Authorisation Rules to control the work that may be undertaken by firms during that 90-day period;
- d) provision for the funding of the ARP in 2012/13 to be provided by both the regulated community and the qualifying insurers; and
- e) provision to remove the role of the ARP in 2012/13 for making payments in respect of uninsured firms and move this responsibility to the Compensation Fund.

2.2. The objectives and proposals were broadly supported by over 80% of respondents. Other respondents gave diverse comments ranging from suggesting that these proposals do not go far enough to wanting to keep the ARP.

### Our response

2.3. We are pleased that respondents broadly supported our decisions set out in the April 2011 Policy Statement. Detailed comments, often highlighted in this section of response, are reiterated in respondents' answers to specific questions referred to below.

## 3. Qualifying Insurer's Agreement (QIA) 2012 including the SRA Indemnity Insurance Rules (SIIR) 2012

### Changes proposed to QIA and SIIR

#### Extended indemnity period and cessation period

3.1. Generally respondents support the proposal of an Extended Indemnity Period and Cessation Period, however many have reservations about implementation details and workability of these arrangements.

### **Our response**

- 3.2. We welcome all the issues raised relating to implementation and workability of these arrangements. We analysed them carefully to ensure all aspects were considered when developing the mechanics of this policy.
- 3.3. On consideration of all the responses we will introduce the Extended Indemnity Period and Cessation Period in policies of qualifying insurance from 1 October 2012.
- 3.4. We agree with some respondents' suggestions that the cover should be back dated. If a firm in the Extended Indemnity Period or Cessation Period obtains cover from a Qualifying Insurer, that insurer will be obliged to back date the cover to the end of the original policy (prior to the start of the Extended Indemnity Period).
- 3.5. We recognise that limiting cover to liabilities arising from existing instructions during the Cessation Period could lead to disputes as to what amounts to "new instructions" and could adversely affect client financial protection. We have taken this into account and now propose that there will be no carve out of cover for liabilities incurred in respect of "new instructions" during the Cessation Period as previously contemplated. The relevant Qualifying Insurer will be required to provide cover for such liabilities although the reimbursement provisions will be amended to allow the Qualifying Insurer to seek reimbursement of any amounts paid to meet such liabilities from the firm and its Principals.

### **Notice of intention not to renew cover**

- 3.6. Most respondents do not support this proposal, believing it cannot work in practice. There are concerns that insurers will send the notice to all firms while other arguments include the need for the profession to take responsibility themselves in submitting proposal in a timely way.

### **Our response**

- 3.7. We have reconsidered this proposal and have concluded that it is an unnecessary interference in the market which could actually result in unacceptable distortions.

### **Solicitors' profession contribution to the ARP in respect of 2012 indemnity year liabilities**

- 3.8. The April 2011 Policy Statement proposed a change to the mechanism through which any shortfall in 2012/13 ARP premiums will be met. To date this is met by the qualifying insurers. We proposed that to maintain a viable and competitive open-market system of insurance, the liability for the ARP's 2012/13 indemnity period (excess of premium collected) will be shared between the solicitors' profession and the qualifying insurers which participate in the 2012 indemnity period in a layered approach. We proposed that the first £10m of the shortfall should be met by the profession, the next £10m by insurers (each in proportion to their market share) and that this layering should continue up to £50m.
- 3.9. Respondents' opinions were polarised on this question. Some respondents had significant concerns about the layered approach to liability on the basis that considering the current numbers of firms in the ARP, there will be a greater proportion of liability falling on the profession, which under this proposal is liable for the first £10 million and proposed an alternative approach.

### **Our response**

- 3.10. We have considered very carefully all the views and concluded that there is less risk of destabilising the market and increasing the number of firms in the ARP in 2012/13 by staying with the layered structure. Additionally while the current position of firms in the ARP is relatively benign, this may change at any time, posing a significant challenge to the ARP and its funding.
- 3.11. On 4 May 2011 the Law Society Council, representing the profession, agreed to the layered approach to funding the ARP and the profession's commitment to support the transition to the situation of no ARP. We do not consider arguments presented in the alternative proposals as significant enough to waiver on this commitment.
- 3.12. The profession's responsibility for the first layer of the scheme provides additional stability to the insurance market through the removal of the need for Qualifying Insurers to earmark this sum as a emergency fund for the ARP, therefore reducing average premiums charged to firms obtaining open market insurance. The Profession as a whole contributes to the ARP in a more controlled manner, as the assumptions of the amount required are prudent but realistic. On the contrary, this exercise while done by Qualifying Insurers edges on the risk averse side, increasing the amount and therefore average premiums.
- 3.13. We will introduce a layered approach to the profession's contribution to the ARP in respect of the 2012/13 indemnity year, with the £10m layers proposed by the April 2011 Policy Statement.
- 3.14. The general costs of administering and managing the ARP will be borne by the Qualifying Insurers. Costs related to specific claims will form part of the layering.

### **ARP policy cut-off and run-off cover**

- 3.15. There is a support for the ARP policy cut off and run-off proposals and for the use of the Compensation Fund for non-applied firms, however some respondents have argued against the proposals.
- 3.16. Most respondents generally show support for the closure of the ARP as an insurer of last resort and the continuation of its run-off cover for firms that cease to practise whilst in the ARP before September 2013. A small group of respondents was opposed to this proposal.

### **Our response**

- 3.17. We have carefully considered all arguments relating to keeping the ARP as the provider of the cover for uninsured firms and the implications of moving this cover to the Compensation Fund. As set out in the April 2011 Policy Statement we believe it is more appropriate that clients are provided with financial protection by an expansion of the scope of the Compensation Fund.
- 3.18. We will continue with our policy proposals that the Compensation Fund will replace the existing ARP side arrangements from 1 October 2012 to 30 September 2013 and from 30 September 2013 onwards provide compensation in respect of claims against firms that were not insured under a policy of qualifying insurance.

### **Compensation Fund for non-applied firms and scope of cover**

3.19. Responses to this varied with some respondents expressing concerns about costs of the contribution to the Fund, as well as the potential for loss of customer protection. Respondents were concerned about details of this approach and any unintended consequences that may emerge.

#### **Our response**

3.20. We will continue with the policy set out in the SRA April 2011 Policy Statement that the Compensation Fund will:

- a) in the period 1 October 2012 to 30 September 2013, replace the existing side-arrangement; and
- b) from 1 October 2013 onwards, provide compensation in respect of claims against firms who were not insured under a policy of qualifying insurance, including in respect of any liability arising from ongoing practise after the Cessation Period, but before the firm ceases to practise.

3.21. We believe that the existence of non-applied firms is a regulatory failure and it should be the responsibility of the SRA to ensure that the number of these firms and claims arising is minimised and eliminated.

3.22. Secondly the Qualifying Insurers have no association with the non-applied firms as they do not insure or regulate them. We believe it is therefore not appropriate to place the burden of financing claims arising from those firms on the insurance market. This has to date create a distortion in the market as insurers hesitate to enter and be responsible for activities outside their risk assessment.

3.23. In addition the maintenance of the side arrangements would require the maintenance of much of the structure of the current ARP. For a much smaller group of clients this would be disproportionate and add an unnecessary layer of regulatory burden.

## **4. Authorisation Rules**

### **Comments on the changes proposed to the SRA Authorisation Rules**

- 4.1. This question did not raise as high level of response as some previous sections. Less than 20% of respondents commented on proposed changes. The responses range from no support, feeling that this is just more complexity, to stating that the rule changes are fit for purpose.
- 4.2. In general there is support for the proposed changes as they are needed to fully implement the proposals outlined.

#### **Our response**

4.3. We are pleased that this change is generally supported. We believe the change is essential in order for us to be able to take prompt and effective regulatory action against firms that do not take proper steps to close down in the Cessation Period and those that continue to practice beyond the end of Cessation Period.

## 5. Compensation Fund Rules

### Comments on the changes proposed to the SRA Compensation Fund Rules

- 5.1. Less than 20% of respondents commented on these proposals. Many express a variety of doubts and concerns including: that this proposal may not apply in all cases, that the Fund might not be sufficient in every scenario before it, as to the cost of this proposal, and as to other unintended consequences.

### Our response

- 5.2. The Legal Services Act extends the permitted scope of our compensation arrangements including the Compensation Fund. In order for the Compensation Fund to be properly utilised for this purpose it must be able to make grants of compensation in circumstances substantially the same as the circumstances which are presently covered by the Minimum Terms and Conditions (**MTCs**) and the ARP Policy.
- 5.3. The Law Society has powers to make rules in respect of compensation arrangements under section 36 and 36A of the Solicitors Act (**SA**). These powers are broad and allow the Law Society to make rules for grants of compensation that would cover "any act or omission". However, the powers under the SA do not extend to licensed bodies, the regulation of which is governed by the Legal Services Act (**LSA**). It was for this reason that an Order was made under section 69 of the LSA (**the Order**). The Order had the effect of extending the Law Society's compensation powers to apply to licensed bodies on the same broad terms as exist under the SA.
- 5.4. We are seeking the permanent section 69 Order to grant us the above powers. We will be amending the Compensation Fund Rules to allow grants to be made, covering these additional circumstances.

## 6. Proposed changes not included in the April 2011 policy statement

### Credit ratings of qualifying insurers

- 6.1. This question provoked one of the greatest responses. The majority of respondents are in favour of introducing a credit rating notification requirement for qualifying insurers. It is generally felt that whilst it is not for the SRA to regulate qualifying insurers, they need to provide better information to the profession, including financial strength information, and the identity of the rating agency. Other suggestions include requiring a report of any downgrading in ratings; prominent disclosure of the rating; and details of the protection available and of those insurers not offered protection by EEA compensation criteria.
- 6.2. Some respondents go further and think that the SRA should require (and set) a minimum credit rating. However there is also an opposition to this proposal highlighting the danger of confusion and unnecessary bureaucratic burden, which would detract more competitors into the market.

### Our response



- 6.3. We are encouraged by the overwhelming support for the introduction of a requirement on each insurer to disclose its credit and/or financial strength rating or the absence of such a rating.
- 6.4. We will request, from the 2012/13 indemnity period, that all qualifying insurers disclose their rating/or lack of it, and the name of the rating agency to allow the SRA to publish this information on our website. We will also require qualifying insurers to make this information part of any quotation.
- 6.5. We will keep these arrangements under review and reconsider our position in due course, together with all the responses we received during this consultation.

## **7. Further issues**

### **Acceptance periods**

- 7.1. We had a good response to this question with almost 60% of respondents commenting. The majority of respondents are in favour of an acceptance period for a quote, but most of these think that the proposed five days timescale is too short and suggest a longer period of between 10 and 21 days.
- 7.2. Many respondents also raise concern that extending the deadline may encourage late issuing of terms by insurers and more firms moving to the Extended Indemnity Period.

### **Our response**

- 7.3. Whilst there is a support for the introduction of an acceptance period for quotes, we do not intend making any changes in this respect. We believe that as a legal services regulator it is not our role to set a time limit and it is more balanced, to ensure that there is a vibrant and competitive market for professional indemnity insurance (**PII**) which is not unnecessarily burdened by disproportionate regulation.

### **Cancellation of policies**

- 7.4. Responses show a split as to cancellation of policies for non-payment of premium, but the majority do not support cancellation for misrepresentation which is seen as a much more complex issue. Some responses do support cancellation unless premiums have been fully paid (or are subject to a loan agreement). Misrepresentation is an issue which is currently under review by the Law Commission but many think this should not be a ground for cancellation (which puts a justified claimant at risk). Some think the SRA should take a tougher action over non-payment of premiums.

### **Our response**

- 7.5. We value all the comments and suggestions put forward in this discussion. These responses will help inform our thinking when we reconsider this matter in due course. However we do not intend making any changes in this area for 2012/13.

## **8. Impact analysis**

- 8.1. The consultation paper was accompanied by the April 2011 equality impact assessment (EIA) which had been revised and updated to take account of the

dramatic changes in the size and composition of the ARP and the SRA's decision to replace the ARP with the system of extended policy periods. Respondents were invited to comment.

- 8.2. Only two respondents commented. The first made a general comment that we should ensure we make provision for reasonable adjustments for disabled people as we implement these changes. The second considered that the updated EIA is justified in light of the equalities evidence.

### **Our response**

- 8.3. We will continue to make provision for reasonable adjustments in line with our [Reasonable Adjustment Policy](#) as these changes are implemented. We will take reasonable steps in the way we work with disabled people so they are not disadvantaged in comparison to people who are not disabled.

**Summary of overall responses**

The table below sets out a summary of the main responses by whether respondents agreed or disagreed with the main proposals.

	<b>Q1</b> Comments on the decisions, set out in the policy statement which form the basis of changes consulted on	<b>Q2</b> Comments on changes proposed to the QIA and SIIR: <b>a.</b> Extended policy & cessation period <b>b.</b> Notice of intention not to renew cover <b>c.</b> Contribution to the ARP <b>d.</b> ARP policy cut off and run off cover <b>e.</b> Comp Fund for non applied firms	<b>Q3</b> Comments on the Authorisation Rules	<b>Q4</b> Comments on the Compensation Rules	<b>Q5</b> Credit ratings of QI- require QI to confirm its rating (if any)	<b>Q6</b> <b>i.</b> .acceptance periods <b>ii.</b> .cancellation of policies <b>a.</b> .non payment <b>b.</b> misrepresentation
<b>LAWYER REPRESENTATIVE GROUPS</b>						
1	Rule changes should be clear concise and unambiguous with reasonable adjustments for disabled people as the changes are implemented	-	-	-	-	-
2	Support	Support save that b is unworkable	-	-	Yes	<b>i.</b> Yes but 10 as a minimum <b>ii.</b> a. – b. No
3	Support	-	-	-	Yes plus SRA should introduce a minimum rating	<b>i.</b> Yes <b>ii.</b> a.Yes b.Yes

4	-	Support	-	-	Yes	i.Yes ii.a. Yes ii.b.No
5	-	Support save that for concerns about premium under a. and about c and e	-	Does not support move to Compensation Fund	-	i.Yes but 14 days
6	Support	Support	-	-	No	i. Yes but more than 5 ii.a. Yes ii.b.No
7	Support	Support	-	-	No	i. Yes but 14 ii.a. Yes ii.b.No
8	-	c.Do not support any contribution by the profession,.	Do not support - all messy	Do not support – all messy	Yes	i.No ii.a. Yes ii.b. Yes
9	-	a.Support b.Do not support c.50:50 share d.Support e.Do not support	Support	Do not support – retain side policy	Yes	i. Yes but 21 ii.a. No ii.b.No
10	Keep ARP as insure of last resort	b. is unworkable. e.Do not support	-	Do not support	Yes	i.No ii.a.No ii.b.No
11	Support	Support	-	-	No	i. Yes ii.a. Yes ii.b. Yes
12	-	b.is unworkable	-	-	-	i.No ii.a.No ii.b.No
<b>OTHER REPRESENTATIVE GROUPS</b>						
13	-	a.Support c. Support	-	-	-	i.- ii.a.No ii.b.No
14	Support	b. is unworkable	-	-	-	i.- ii.a. Yes ii.b. Yes

<b>REGULATORS and OMBUDSMEN</b>						
15	Proposals do not go far enough	e. concerns	-	-	-	-
<b>INSURERS and BROKERS</b>						
16	Support	Support save that b is unworkable	-	-	Yes plus SRA should introduce a minimum rating	i. No ii.a. No ii.b. No
17	Falls short of our expectations	a.Support b.Do not support c.Support d.Support e.Support	Support	-	Yes	i.Do not support ii.a.- ii.b. -
<b>FIRMS</b>						
18	Support the decisions already made	-	-	-	Yes	i. Yes but 10 or 14 ii . a. Yes ii. b. -
19	Support	-	-	-	-	i.Yes ii.a.Yes ii.b.Only for deliberate or fraudulent
20	-	-	-	-	Yes	-
21	-	Support save that b is unworkable	-	-	Yes	-
22	Support	No these changes will not work in practice	-	-	Yes plus SRA should - introduce a minimum rating	-
23	-	-	-	-	Yes	-
24	-	Support save that b is unworkable	-	-	Yes	-
25	-	-	-	-	Yes	-
26	-	-	-	-	Yes	-
27	-	-	-	-	Yes	-
28	-	-	Support	Support	Yes	-
29	Support	c.Do not support any contribution by the	Support	Support	-	i.- ii.a.Yes

		profession,. Does support SIF payment				ii.b. -
30	-	-	-	-	Yes	-
31	-	-	Many difficulties in practice	Do not support – not properly costed	yes	-
32	-	b.is unworkable	-	-	Yes	i.Yes ii.a.- ii.b.-
33	Support	-	Support	-	Yes	i.Yes ii.a.No ii.b.No
<b>INDIVIDUALS</b>						
34	-	-	-	-	Yes	-
35	Support	Support save that b is unworkable	-	-	Yes plus SRA should introduce a minimum rating	i. No ii.a. No ii.b. No
36	-	-	-	-	Yes	-
37	-	-	-	-	Yes	-
38	-	-	-	-	Yes	i. Yes but 21 ii.a.No ii.b.No