
THE RUN-OFF MINIMUM TERMS AND CONDITIONS

Run-Off Minimum Terms and Conditions

Indemnity Period 2022 / 2023

1 Interpretation

1.1 In this contract, the following expressions shall have the following meanings:

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

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

“**Additional Self Insured Excess**” has the meaning ascribed to it in Clause 5.1;

“**Amount Insured**” means the limit of liability of the Insurer pursuant to this contract as set out in Clause 3.1;

“**Circumstance**” means an incident, fact, occurrence, matter, act or omission that may give rise to a Claim in the context of civil liability;

“**Claim**” means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:

- (a) civil compensation of any nature or civil damages of any nature; or
- (b) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2015, the Legal Services Regulation Act 2015 or any regulations made thereunder, for compensation or restitution to clients or any other obligation that may be imposed on solicitors or Registered Lawyers to compensate or make restitution to clients by statute from time to time, but for the avoidance of doubt, the term “**Claim**” does not include any claim for the payment of costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in this sub-paragraph (b) where the Coverage excludes the Insurer’s liability to indemnify the Insured in respect of such costs.

For the purposes of this sub-paragraph (b), the discharge of an obligation of an Insured, following receipt by an Insured of a Notification of a Requirement to Rectify, shall be treated as a “**Claim**” (subject to the provisions of the Regulations and/or Minimum Terms and Conditions) notwithstanding that a formal award pursuant to the provisions of the Solicitors Acts 1954 to 2015, the Legal Services Regulation Act 2015 or any regulations made thereunder, has not been made;

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

“**Client Account**” shall have the same meaning as prescribed in the Solicitors Accounts Regulations 2014 (S.I. 516/2014) or the meaning prescribed in any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations 2014 (S.I. 516/2014);

“**Commercial Property Regulations**” means the Solicitors (Professional Practice, Conduct and Discipline – Commercial Property Transactions) Regulations 2010;

“**Coverage**” means this arrangement for indemnification;

“Coverage Period” means the period for which this Coverage affords cover as set out in Clause 6.10;

“Defence Costs” mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer (such consent not to be unreasonably withheld) in relation to a Claim including without limitation the costs of:

- (a) defending any proceedings; or
- (b) conducting any proceedings for indemnity, contribution or recovery; or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim;

but the term **“Defence Costs”** does not include:

- (i) any internal overhead expenses of the Insured or the Insurer or the cost of any Insured's time, or
- (ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) under the definition of “Claim” where the Coverage excludes the Insurer's liability to indemnify the Insured in respect of such costs;

“Direction” shall have the meaning ascribed to it in Clause 9.1;

“Distressed Firm” has the meaning ascribed to it in the Regulations;

“Distressed Firm Premium” has the meaning ascribed to it in the Regulations;

“Employee” means any person, other than a Principal, employed or otherwise engaged in the Firm's Practice, including, without limitation, solicitors, registered lawyers, other lawyers, trainee solicitors, consultants, associates, locum staff members, persons seconded to work in the Firm's Practice or persons seconded by the Firm to work elsewhere, office and clerical staff or otherwise;

“Financial Institution” means any of the following:

- (a) a credit institution as defined in section 2(1) of the 1995 Act; or
- (b) a credit institution that is the holder of an authorisation for the purposes of Article 3(1) of Directive 2013/36/EU; or
- (c) a retail credit firm authorised pursuant to section 31 of the 1997 Act; or
- (d) a home reversion firm authorised pursuant to section 31 of the 1997 Act; or
- (e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person; or
- (f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

“Firm” means:—

- (a) any partnership of two (2) or more solicitors or registered lawyers (as constituted from time to time, whether before or during any relevant indemnity period), including where such partnership has been authorised as a limited liability partnership under the Legal Services Regulation Act 2015; or
- (b) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who, although having established a practice, is employed by a person who is not a solicitor or registered lawyer;

where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

“Firm’s Practice” means the practice carried on by the Firm, and includes the business of any trustee, nominee, service or administration company owned, in whole or in part, by one or more of the Principals of the Insured;

“Historic Circumstances” has the meaning ascribed to it in Clause 2.3.4;

“Historic Claim” has the meaning ascribed to it in Clause 2.3.1;

“Indemnity Period” means the period of one (1) year starting on 1 December 2022;

“Insured” means:

- (a) the Firm; or
- (b) each trustee, nominee, service or administration company owned, in whole or in part, by the Firm and/or one or more of the Principals of the Firm from time to time; or
- (c) each director, officer or employee of any such company as is referred to in paragraph (b) above from time to time; or
- (d) each Principal or former Principal of the Firm from time to time; or
- (e) each Employee or former Employee of the Firm from time to time; or
- (f) the estate or legal personal representatives of any deceased former Principal or Employee of the Firm.

“Insurer” means the insurers participating in the Special Purpose Fund in respect of the Indemnity Period;

“Investment Advice” has the meaning ascribed to such term in the Regulations;

“Investment Business Service” has the meaning ascribed to such term in the Regulations;

“Law Society” means the Law Society of Ireland;

“Legal Partnership” has the meaning assigned to it in the Legal Services Regulation Act 2015;

“Legal Services” means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):

- (a) any Investment Business Services or Investment Advice provided by a Firm; and
- (b) acting as personal representative or trustee; and
- (c) acting as notary public; and
- (d) acting as commissioner for oaths; and
- (e) acting as liquidator or receiver; and
- (f) acting as company secretary; and
- (g) acting as director of any company owned, in whole or in part, by one or more of the Principals of a Firm that provides trustee, nominee, administration or other similar services; and
- (h) acting as arbitrator, mediator, expert determiner, adjudicator, or conciliator; and
- (i) acting on a pro bono basis; and
- (j) acting as Personal Insolvency Practitioner; and
- (k) acting as an expert witness and/or providing opinions as a professional expert; and
- (l) acting as a patent agent; and
- (m) acting as a registered trade mark agent; and
- (n) acting as a European trade mark & design attorney;

"Limited Liability Partnership" has the meaning assigned to it in the Legal Services Regulation Act 2015;

"Minimum Terms and Conditions" has the meaning ascribed thereto in the Regulations;

"Multi-Disciplinary Practice" has the meaning assigned to it in the Legal Services Regulation Act 2015;

"NAMA" means the National Asset Management Agency;

"Non-Compliant Run-Off Firm" has the meaning ascribed to it in the Regulations;

"Non-Compliant Run-Off Firm Premium" has the meaning ascribed to it in the Regulations;

"Notification of a Requirement to Rectify" means a notice in writing (including email) from the Registrar of Solicitors or from such other person as may be appointed by the Law Society for that purpose:-

- (a) notifying an Insured that a deficit has arisen on one or more of the Insured's Client Account(s),
- (b) informing the Insured of the Insured's obligation to rectify such deficit(s), and
- (c) setting out the regulatory consequences for the Insured should such rectification not occur within a specified period of time;

“Operative Date” means 1 December 2022;

“Partner” means a partner in the Firm;

“Personal Insolvency Practitioner” has the meaning ascribed to such term in the Personal Insolvency Act 2012;

“Phoenix Firm” has the meaning ascribed to such term in the Regulations;

“PII Committee” means the professional indemnity insurance committee constituted under the Regulations;

“Practice” means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of Legal Services from an establishment in the State and where such Legal Services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

“Practice Manager” has the meaning assigned to it in the Regulations

“Preceding Practice” means each Practice:

- (a) which has ceased practice; and
- (b) to which the Firm’s Practice is a Succeeding Practice;

“Principal” means:—

- (i) the sole practitioner of any firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or
- (ii) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that during any indemnity period carries on or carried on business as a partnership; or
- (iii) a practice manager;

“Qualifying Insurance” has the meaning ascribed to it in the Regulations;

“Registered Lawyer” means a lawyer that has been granted a registration certificate by the Law Society and has been entered onto the register maintained by the Law Society within the meaning of and in accordance with the European Communities (Lawyers’ Establishment) Regulations 2003 (Statutory Instrument No. 732 of 2003) and a reference to a registered lawyer in these Regulations, where consistent with the context thereof, includes a former registered lawyer or a deceased registered lawyer;

“Registrar of Solicitors” means the holder of the office of Registrar of Solicitors appointed by the Law Society pursuant to section 8 of the Solicitors Act 1954;

“Regulations” means the Solicitors Professional Indemnity Insurance Regulations 2020 as amended by the Solicitors Professional Indemnity Insurance (Amendment) Regulations 2021 and the Solicitors Professional Indemnity Insurance (Amendment) Regulations 2022, as may be amended from time to time.

“Relevant Period” has the meaning ascribed to it in Clause 2.3.1;

“Relevant Policy” has the meaning ascribed to it in Clause 2.3.1;

“ROF” means the run-off fund;

“ROF Eligibility Criteria” has the meaning ascribed to it in the Regulations;

“ROF Premium Schedule” has the meaning ascribed to it in the Regulations;

“Run-off Cover” has the meaning ascribed to it in the Regulations;

“Run-off Cover Rules” has the meaning ascribed to it in the Regulations;

“Self-Insured Excess” means the aggregate amount of the Standard Self Insured Excess and any Additional Self Insured Excess which the Insured is required by the terms of this contract to pay to the Claimant in the event of a Claim;

“Solicitors Accounts Regulations” means the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014) or any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014);

“SPF Manager” means any person (including any body corporate, partnership or unincorporated body) from time to time appointed by the PII committee to manage the Special Purpose Fund, and includes any replacement to such a person appointed from time to time;

“Special Purpose Fund” has the meaning ascribed thereto in the Regulations;

“Standard Self-Insured Excess” has the meaning ascribed to it in Clause 5.1;

“Succeeding Practice” means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):

- (a) it is held out as being a successor to the practice or part thereof of the preceding practice by whatever means such holding out occurs; or
- (b) it is conducted by a partnership where two or more of the principals are identical to those persons who were principals of any partnership that conducted the preceding practice,
- (c) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or
- (d) it is conducted by a sole practitioner who was one of the principals conducting the preceding practice; or
- (e) it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or
- (f) the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice;

but notwithstanding the foregoing a practice shall not be treated as a succeeding practice for the purposes of the minimum terms and conditions pursuant to paragraphs (b), (c), (d), (e) or (f) of this definition if another practice is or was held out by that other practice as the succeeding practice;”

“Working Day” means every day, not including a Saturday, Sunday or public holiday, on which banks are generally open for the transaction of normal banking business in the State.

1.2 In this contract, unless the context otherwise requires:

- (a) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Regulations;
- (b) the Interpretation Act 2005 shall apply for the purpose of interpreting this contract as it applies to the interpretation of an act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2015, the Legal Services Regulation Act 2015, the Regulations or with this contract;
- (c) a reference to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:
 - (i) any subordinate legislation made under it, and
 - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of this contract;
- (d) the singular includes the plural, and vice versa;
- (e) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
- (f) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;
- (g) references to a “company” include any body corporate;
- (h) headings are inserted for convenience only and shall not affect the interpretation of this contract; and
- (i) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

2 **Scope of Cover**

2.1 **The Insured**

The persons insured under this Coverage include all those persons and entities which are set out in Clause 1 of this contract under the definition of **“Insured”**.

2.2 **Civil Liability**

The Insurer will indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services prior to the cessation of the Firm’s Practice provided that:

- 2.2.1 The Claim in respect of such civil liability does not arise from the provision of Legal Services by the Insured in the course of or in connection with a practice that was operating as a Legal Partnership or a Multi-disciplinary Practice; and

- 2.2.2 a Claim in respect of such civil liability is
- (a) first made against the Insured during the Coverage Period; and
 - (b) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- 2.2.3 a Claim in respect of such liability is first made during or after the Coverage Period and:
- (a) arises from Circumstances first notified to the Insurer during the Coverage Period; or
 - (b) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

2.3 Continuous Coverage

Historic claims

2.3.1 Notwithstanding the provisions of Clause 2.2, the Coverage must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where:

- (a) The Claim in respect of such civil liability does not arise from the provision of Legal Services by the Insured in the course of or in connection with a practice that was operating as a Legal Partnership or a Multi-disciplinary Practice; and
- (b) a Claim in respect of such liability:
 - (i) is first made against the Insured during a coverage period (the “**Relevant Period**”) of Run-off Cover (the “**Relevant Cover**”) held by the Firm in respect of an Indemnity Period commencing on or after 1 December 2013; and
 - (ii) is first notified to the SPF Manager during the Coverage Period;
- (c) the Insured maintained Run-off Cover without interruption from the Relevant Period until the date of notification of the Claim to the SPF Manager; and
- (d) the Claim would have been covered by the Relevant Cover,

such a Claim to be referred to herein as an “**Historic Claim**”.

Limit of liability

2.3.2 The liability of an Insurer in respect of any one Historic Claim referred to in Clause 2.3.1 shall not exceed the lesser of the limit of liability of the Insured under the Coverage and the limit of liability of the Insured under the Relevant Cover.

Self-insured excess

2.3.3 Notwithstanding the provisions of Clause 5, the self-insured excess payable by the Insured in respect of an Historic Claim referred to in Clause 2.3.1 shall be the higher of the self-insured excess applicable to the Coverage and the self-insured excess applicable to the Relevant Cover.

Historic circumstances

2.3.4 Notwithstanding the provisions of Clause 2.2, the Coverage must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where a Claim in respect of such liability is first made against the Insured during or after the Coverage Period and:

- (a) The Claim in respect of such civil liability does not arise from the provision of Legal Services by the Insured in the course of or in connection with a practice operating as a Legal Partnership or a Multi-disciplinary Practice; and
- (b) arises from Circumstances which:
 - (i) the Insured first became aware of, or ought reasonably to have become aware of, during the Relevant Period of the Relevant Cover held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
 - (ii) are first notified to the SPF Manager during the Coverage Period;
- (c) the Insured maintained Run-off Cover with the Insurer without interruption from the Relevant Period until the date of notification of the Circumstances to the SPF Manager; and
- (d) the Claim would have been covered by the Relevant Cover,

such Circumstances to be referred to herein as "**Historic Circumstances**".

Limit of liability

2.3.5 The liability of an Insurer in respect of any one Claim referred to in Clause 2.3.4 arising from Historic Circumstances shall not exceed the lesser of the limit of liability of the Insured under the Coverage and the limit of liability of the Insured under the Relevant Cover.

Self-insured excess

2.3.6 Notwithstanding the provisions of Clause 5, the self-insured excess payable by the Insured in respect of a Claim referred to in Clause 2.3.4 arising from Historic Circumstances shall be the higher of the self-insured excess applicable to the Coverage and the self-insured excess applicable to the Relevant Cover.

2.4 **Defence Costs**

The Insurer will indemnify the Insured against Defence Costs in relation to:

- 2.4.1 any Claim referred to in Clauses 2.2 and 2.5; and
- 2.4.2 any Circumstance referred to in Clauses 2.2 and 2.5;

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

2.5 **Preceding Practice**

2.5.1 The Insurer will indemnify each Insured against civil liability to the extent that such liability arises from any provision of Legal Services in connection with a Preceding Practice where such services were provided prior to the cessation of the Firm's Practice, provided that

- (a) The Preceding Practice in question was not a Legal Partnership or a Multi-disciplinary Practice; and
- (b) a Claim in respect of such liability is:
 - (i) first made against an Insured during the Coverage Period; and
 - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (c) a Claim in respect of such liability is first made during or after the Coverage Period and
 - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
 - (ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.5.2 The cover contemplated in this Clause 2.5 includes:

- (a) each Partnership or sole practitioner who carried on the Preceding Practice;
- (b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;
- (c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;
- (d) each Principal and former Principal of any Partnership referred to in paragraph (a);
- (e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and
- (f) the estate or legal personal representatives of any person referred to in this Clause 2.5.2 who is deceased or legally incapacitated.

3 Limit of insurance cover

3.1 Limit of liability for Claims

The Amount Insured for each and every claim (exclusive of Defence Costs) shall be equal to the limit of the liability of the Participating Insurer under the Firm's Qualifying Insurance in respect of the Indemnity Period in which the Firm ceased practice.

3.2 Cover for Defence Costs

There shall be no limit on the cover for Defence Costs.

3.3 **Proportionate liability for Defence Costs**

Notwithstanding Clause 3.2, liability for Defence Costs in relation to a Claim that exceeds the Amount Insured is limited to the proportion of such Defence Costs that the Amount Insured bears to the total amount paid or payable to dispose of that Claim.

3.4 **No retrospective dates**

The Coverage shall not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions that occurred prior to the commencement of this contract.

3.5 **No other limits**

The Coverage does not apply any monetary exclusions or limits except as provided for by Clauses 3.1 and 3.3. For the avoidance of doubt, this Clause 3.5 shall not be construed to prevent an Insured and the SPF manager (on behalf of the Insurer) from agreeing that the cover shall provide for a Self-Insured Excess.

4 **Premium**

4.1 No premium shall be payable by an ROF Eligible Firm for Run-off Cover, unless such firm is a Distressed Firm in accordance with Regulation 7 of the Regulations and/or unless such firm is designated a Non-Compliant Run-Off Firm in accordance with Regulation 10 of the Regulations.

4.2 A Distressed Firm shall pay in advance of entry to the ROF such sum by way of an advance payment of premium to be known as the "*Distressed Firm Premium*" as the SPF manager may determine in accordance with the ROF Premium Schedule.

4.3 A Non-Compliant Run-Off Firm shall pay such sum by way of a payment of premium, to be known as the "*Non-Compliant Firm Premium*", as the SPF manager may determine in accordance with the ROF Premium Schedule.

5 **Self-Insured Excess**

5.1 **Self-Insured Excess**

The Self-Insured Excess applicable to the Coverage shall comprise of the following:

5.1.1 a self-insured excess equal to the self-insured excess applicable to the Qualifying Insurance held by the Firm at the time it ceased practice as set out in Schedule 1 (the "**Standard Self-Insured Excess**");

5.1.2 an additional self-insured excess (if any) as determined by the SPF Manager (for and on behalf of the Insurer) in accordance with the run-off cover rules as set out in Schedule 2 (the "**Additional Self-Insured Excess**").

The Insured will bear the first amount of each and every Claim up to the amount of the Self-Insured Excess.

5.2 **Effect of Self-Insured Excess**

5.2.1 The Self-Insured Excess does not reduce or limit the Amount Insured.

5.2.2 The Self-Insured Excess does not apply to Defence Costs.

5.3 **Payment of Self-Insured Excess to Claimant**

In the event that an amount which is within the Self-Insured Excess is not paid by an Insured to a Claimant within 30 (thirty) Working Days of its becoming due, the Insurer must redress the default on the part of the Insured and make payment thereof to the Claimant provided that in such circumstances the total aggregate liability of the Insurer in respect of Claims and in respect of any amount within the Self-Insured Excess required to be paid by the Insurer in accordance with this Clause 5.3 shall not exceed €1,500,000. The Insurer shall be entitled to recover any amount paid which is within the Self-Insured Excess from the Insured.

5.4 **Financial Institutions**

The Insurer shall not be required to pay any amount that is within the Additional Self-Insured Excess in respect of claims made by Financial Institutions.

5.5 **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 Self-Insured Excess.

6 **Special Conditions**

6.1 **No cancellation**

6.1.1 Subject to Clause 6.2, this contract cannot be cancelled unless:

- (a) The Firm is a Defaulting Run-Off Firm and the SPF Manager makes arrangements pursuant to Regulation 8(a) and the Defaulting Run-Off Firm makes an application for authorisation under Section 125 of the Legal Services Regulation Act 2015; or
- (b) the Firm has obtained replacement Qualifying Insurance in accordance with the Minimum Terms and Conditions in force on the date of cancellation of this contract;
- (c) the Participating Insurer or Participating Insurers under the replacement Qualifying Insurance have confirmed in writing to the Firm and to the SPF Manager that they are providing qualifying insurance on the basis that the Firm's Practice is to be treated as a continuation of the Firm's Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and
- (d) the Participating Insurer or Participating Insurers under the replacement Qualifying Insurance have provided any required confirmations of coverage to the Law Society; or
- (e) the Firm ceases to be a ROF Eligible Firm.

6.1.2 Cancellation of this contract shall not prejudice the accrued rights and obligations of the Insurer and the Insured under this contract prior to the date of cancellation.

6.2 **Phoenix Firms**

6.2.1 The SPF Manager may cancel this contract forthwith where, pursuant to Regulation 4(q) of the Regulations, the PII Committee decides to treat another firm as a Phoenix Firm to the Firm.

6.2.2 The SPF Manager shall honour and discharge any amount due and owing in respect of any Claim or Circumstance notified to the SPF Manager within the period from the commencement of this contract until its cancellation by the SPF Manager pursuant to Clause 6.2.1 but the SPF Manager shall be entitled to recover any amount so paid from the Firm or from those persons who were Principals of the Firm immediately prior to the date it ceased practice.

6.3 **No avoidance or repudiation**

The Insurer is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

6.4 **Rights of Insurer**

In any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with the placement or renewal of the Coverage, the Insurer may refer the conduct of any relevant Principal of the Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2015 or otherwise.

6.5 **No set off**

Any indemnity amount payable to the Insured by the Insurer under this contract must be paid only to the relevant Claimant or as the Claimant may direct. The Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured.

6.6 **No other policy to bar recovery**

Subject to Clause 7.4, rights of recovery available to the Insured under a policy of insurance will not bar recovery in respect of any Claim under this contract.

6.7 **Notification of Claims**

The Insured shall report or notify any Claim or Circumstance required to be reported or notified pursuant to this contract to the SPF Manager (acting on behalf of the Insurer) as soon as is reasonably practicable after becoming aware of such a Claim or Circumstance.

Every Principal of the Insured shall be responsible for ensuring that the Insured makes any notifications or reports required pursuant to this contract.

6.8 **Additional Information**

The Firm shall provide to the SPF Manager such information as the SPF Manager may from time to time in its discretion reasonably require to deal efficiently and effectively with the Firm's membership of the Run-Off Fund.

6.9 **No denial or reduction**

Subject to Clause 2.2, the Insurer shall not on any grounds whatsoever, including but not limited to the following:

6.9.1 any failure to notify a Claim or Circumstance within a prescribed period; or

6.9.2 any breach of any term or condition of this contract;

be entitled to reduce or deny its liability under this contract, except in circumstances where a prescribed exclusion contemplated by Clause 7 applies.

6.10 **Coverage Period**

The Coverage Period shall commence on the expiry of the Qualifying Insurance held by the Firm on the date it ceases practice and shall continue until the end of the Indemnity Period unless otherwise cancelled in accordance with the terms of this contract.

6.11 **Contesting Liability**

The Insured shall not be required against its wish to contest the issue of liability in any legal or arbitration proceedings arising from any Claim unless a solicitor or a member of the Irish Bar (as mutually agreed upon between the Insured and the SPF Manager (acting on behalf of the Insurer), or failing agreement, to be appointed by the Chairperson of the Bar Council of Ireland) shall advise that such proceedings or arbitration should be contested.

7 **Exclusions**

7.1 **No other exclusions**

The liability of the Insurer under this contract shall not be excluded or limited on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one (1) or a number of the matters set out in this Clause 7.

7.2 **Death or bodily injury**

The Insurer is not liable to indemnify any Insured for any act or omission of the Insured which causes, results in or contributes to death or bodily injury save that the Insurer is liable to indemnify any Insured for psychological injury or emotional distress (including but not limited to stress-related claims).

7.3 **Property**

The Insurer is not liable to indemnify for any act or omission of any Insured which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

7.4 **Previous cover**

The Insurer is not liable to indemnify any Insured in respect of claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be

indemnified in respect of the same Claim. Save as specified in this Clause 7.4, the Coverage shall comply with Clause 6.6.

7.5 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 the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.

7.6 Trading debts

The Insurer is not liable to indemnify any Insured against any trading loss or personal debt incurred by the Insured.

7.7 Partnership Agreement

The Insurer is not liable to indemnify any Insured against any actual or alleged breach or other relief in respect of disputes relating to the membership of and rights and obligations relating to membership of the Firm or disputes relating to or arising out of the partnership agreement between any two (2) or more persons comprising or formerly comprising the Firm.

7.8 Solicitors Acts 1954-2015/Legal Services Regulation Act 2015

Save as specifically provided in the Regulations and/or the Minimum Terms and Conditions, the Insurer is not liable to indemnify any Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society, the Legal Services Regulatory Authority or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach), by the Insured, of any provisions of the Solicitors Acts 1954 to 2015, the Legal Services Regulation Act 2015 or any regulations made thereunder or in respect of misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (b) of the definition of “**Claim**”).

7.9 Insured acting as their own lawyer

The Insurer is not liable to indemnify any Insured against any liability arising in respect of a transaction where the Insured has acted as his or her own lawyer save and except where another solicitor or registered lawyer in the Firm has bona fide acted at arm's length for the Insured concerned in respect of any such transaction or where the Claim is by a bona fide third party in respect of such transaction.

7.10 Claims/Exposure to risk outside Ireland

The Insurer is not liable to indemnify any Insured against any loss occurring or any liability arising in connection with:

7.10.1 the provision of Legal Services by the Insured otherwise than from an establishment within the State; or

7.10.2 any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the State (for this purpose the law of the State includes European Union law where the same forms part of the law of the State).

7.11 Employment

The Insurer is not liable to indemnify any Insured against any Claim or Circumstance arising out of:

7.11.1 a wrongful dismissal; or

7.11.2 any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress-related claim brought by an Employee against the Firm where such claim arises out of the employment relationship between that Employee and the Firm) where such dismissal or breach is alleged or such relief is sought against the Insured.

7.12 **Contracts**

The Insurer is not liable to indemnify any Insured against:

7.12.1 wrongful termination by the Insured of; or

7.12.2 any other actual or alleged breach by the Insured of; or

7.12.3 any other relief claimed against the Insured in respect of;

any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

7.13 **Directors' liability**

The Insurer is not liable to indemnify any natural person in their capacity as a director or officer of a company, other than an administration, nominee, service or trustee company in respect of which coverage is otherwise required to be extended pursuant to this contract, except that:

7.13.1 this contract shall cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services; and

7.13.2 this contract shall cover each Insured against any vicarious or joint liability.

7.14 **War, Terror, Asbestos, Radiation**

The Insurer is not liable to indemnify any Insured in respect of losses directly or indirectly caused by:

7.14.1 war, riot, civil commotion and other hostilities;

7.14.2 terrorism;

7.14.3 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; or

7.14.4 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Legal Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

7.15 Undertakings to Financial Institutions in respect of Commercial Property Transactions

Certain capitalised terms in this clause are defined in Clause 7.16.

7.15.1 Undertakings to Financial Institutions in respect of Commercial Property Transactions before 1 December 2009

The Insurer is not liable to indemnify any insured in respect of Claims arising directly or indirectly as a result of the provision by the Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, before 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where:

- (a) the Relevant Undertaking was given by the Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to the Insured's client to permit that client to effect the relevant Commercial Property Transaction; and
- (b) such Claims are made by a Financial Institution; and
- (c) to the extent that the Insurer can demonstrate any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

For the avoidance of doubt, nothing in this Clause 7.15.1 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client

7.15.2 Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 1 December 2009 but before 1 December 2010.

The Insurer is not liable to indemnify any Insured in respect of Claims arising directly or indirectly as a result of the provision by the Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, on or after 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where the Relevant Undertaking was given by the Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction.

For the avoidance of doubt nothing in this Clause 7.15.2 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client.

7.15.3 Undertakings in breach of the Commercial Property Regulations on or after 1 December 2010

The Insurer is not liable to indemnify any Insured in respect of Claims arising directly or indirectly as a result of any Insured acting in breach of the Commercial Property Regulations.

7.16 Interpretation of Clause 7.15

For the purposes of Clause 7.15 the following terms have the following meanings:

“Accountable Trust Receipt” has the meaning ascribed thereto in the Commercial Property Regulations;

“Certificate of Title” has the meaning ascribed thereto in the Commercial Property Regulations;

“Commercial Development” has the meaning ascribed thereto in the Commercial Property Regulations;

“Commercial Property Transaction” has the meaning ascribed thereto in the Commercial Property Regulations;

“Relevant Person” has the meaning ascribed thereto in the Commercial Property Regulations;

“Relevant Undertaking” has the meaning ascribed thereto in the Commercial Property Regulations;

“Representative” has the meaning ascribed thereto in the Commercial Property Regulations;

“Residential Property” has the meaning ascribed to such term in the Commercial Property Regulations;

“Residential Property Transaction” has the meaning ascribed thereto in the Commercial Property Regulations;

“Solicitor” has the meaning assigned to it in Section 3 of the Solicitors (Amendment) Act, 1994 and includes two (2) or more Solicitors acting in partnership or association; and

“Undertaking” has the meaning ascribed to such term in the Commercial Property Regulations.

7.17 Misrepresentation and Non-Disclosure

The Insurer is not liable to indemnify the Insured in respect of any Claim by a Financial Institution in circumstances where the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any Insured was guilty of any material misrepresentation or material non-disclosure in placing the Coverage, save for the following:-

- (i) that liability shall not be excluded on the grounds of innocent misrepresentation or innocent non-disclosure on the part of the Insured; and
- (ii) Where is demonstrated (with the burden of proof resting on the Insurer) that any Insured was guilty of negligent misrepresentation or negligent non-disclosure and the Consumer Insurance Contract Act 2019 applies to that Insurance, the provisions of Section 9(3) and 9(4) of the 2019 Act shall apply in respect of any negligent misrepresentation or negligent non-disclosure, save that an Insurer shall not be entitled to avoid or terminate the Insurance under any circumstances.

For the avoidance of doubt, the effect of this Clause 7.17 shall be that no such Claims shall be valid as against the Insurer.

7.18 Financial Sanctions

The Insurer is not liable to indemnify the Insured against any Claim to the extent that payment of such Claim would cause the Insurer to breach any United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or any other jurisdiction applicable to the Insurer, such that the Insurer would be exposed to a sanction, prohibition or restriction.

7.19 **Insolvency of Financial Institution**

The Insurer is not liable to indemnify an Insured against any Claim arising as a result of the insolvency of a financial institution which holds client money in a Client Account of an Insured or arising from the failure of such financial institution generally to repay monies on demand.

7.20 **Cyber Protection**

7.20.1 The Insurance may exclude liability of the Insurer to indemnify any Insured against any of the Insured's own loss caused by and/or arising out of:

- (a) a Cyber Act; and
- (b) a partial or total unavailability or failure of any Computer System.

7.20.2 The Insurance may exclude liability of the Insurer to indemnify any Insured in respect of a Cyber Extortion Payment.

7.20.3 The Insurance may exclude liability of the Insurer to indemnify any Insured against any loss directly caused by, directly resulting from and/or directly arising out of the transmission of malware, malicious code or similar by the Insured or any other party acting on behalf of the Insured, provided that this exclusion shall not apply in respect of the loss or misappropriation of client moneys or any loss arising therefrom.

7.20.4 The Insurance may exclude liability of the Insurer to indemnify any Insured against any loss directly or indirectly caused by, resulting from and/or arising out of the failure or interruption of services relating to Core Infrastructure, provided that any such failure or interruption of services impacts a Computer System, provided that this exclusion shall not apply in respect of:-

- (a) any failure or interruption of service caused by any actual or alleged negligent act, error or omission by the Insured; and/or
- (b) the loss or misappropriation of client moneys or any loss arising from the said loss or misappropriation.

7.20.5 For the purposes of Clause 7.20, the following terms have the following meanings:

"Computer System" includes any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or controlled by the Insured or any other party acting on behalf of the Insured;

"Core infrastructure" includes any service provided to the Insured or any other party acting on behalf of the Insured provided by an internet services provider, telecommunications provider, cloud provider, or utility provider, but not including the hosting of hardware and software owned by the Insured;

"Cyber Act" includes an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any Computer System;

"Cyber Extortion Payment" includes any money, securities, funds (including bitcoin or other types of

crypto currency or digital currency), or the fair market value of property, uncertified securities or services, which has been paid or delivered by the Insured or any other party acting on behalf of the Insured in response to any ransoms and/or demands arising out of a Cyber Act or a partial or total unavailability or failure of any Computer System.

"directly" means that there was no intervening act or opportunity for an intervening act by the Insured or any other party acting on behalf of the Insured in the course of the event described at Clause 7.20.3 and/or Clause 7.20.4 or between the said event and the resulting loss.

8 General Conditions

In the event of any inconsistency between the general conditions in this Clause 8 and the special conditions set out at Clause 6, the special conditions will prevail.

8.1 Reimbursement

8.1.1 Any Insured who committed or condoned an innocent or negligent non-disclosure or misrepresentation or other innocent or negligent breach of the terms and conditions of this contract will reimburse the Insurer to the extent that is just and equitable and to the extent that is permitted under the Consumer Insurance Contracts Act 2019 (if applicable), having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation or breach, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of this contract was in order to comply with any applicable rules or codes laid down from time to time by the Law Society.

8.1.2 Any Insured who committed or condoned a dishonest or fraudulent non-disclosure or misrepresentation or other dishonest or fraudulent breach of the terms and conditions of this contract will be required to indemnify the Insurer in full in respect of any sums paid by it in or in connection with the discharge of any Claim.

8.1.3 No non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a company unless it was committed or condoned by, in the case of a company, all directors and officers of that company.

8.1.4 Any right of reimbursement contemplated by this Clause 8.1 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

8.2 Reimbursement of Defence Costs

Each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf that the Insurer is not ultimately liable to pay.

8.3 Reimbursement of the Self-Insured Excess

Those persons who are Principals of the Firm at any time during the Coverage Period will reimburse the Insurer for any Self-Insured Excess paid by the Insurer on an Insured's behalf.

8.4 **Reimbursement of monies 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 that, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

8.5 **Claims Reports**

The Insurer will provide a report (a "**Claims Report**") to the Firm within a reasonable time from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:

- 8.5.1 a summary of each Claim of which the Insurer is aware made against the Firm under this contract;
- 8.5.2 the amount reserved by the Insurer against each Claim;
- 8.5.3 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);
- 8.5.4 whether or not each such amount includes Defence Costs;
- 8.5.5 whether each such amount includes or is in excess of the amount of any Self-Insured Excess that may apply in relation to such Claim, and the amount of any such Self-Insured Excess; and
- 8.5.6 any amounts paid out in relation to each Claim, in each case indicating whether such sums include any Self-Insured Excess due from but not paid by the Firm.

In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in this Clause 8.5, 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.

9 **Dispute Resolution**

9.1 **Arbitration**

The Insurance must contain the following arbitration clause:

A dispute or claim arising out of or in connection with this contract, 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 14 (fourteen) days of a written notification being made by one (1) of the parties to the arbitration, by the Chairperson for the time being of the Chartered Institute of Arbitrators ~ Irish Branch or in the event of her being unwilling or unable so to do, by the next senior officer at the Chartered Institute of Arbitrators ~ Irish Branch who is willing and able to make the appointment provided always that this provision shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court or refuses to act or is incapable of acting or dies.

Every or any referral to an arbitrator made pursuant to this Clause 9.1 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any Act or statutory

provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

The parties to an arbitration under this arbitration clause shall notify the PII committee in writing of the arbitration within twenty-eight (28) days of the date of the arbitrator's final award.

The aforesaid notification in writing to the PII committee shall include such information regarding the arbitration as may be determined by the PII committee from time to time, including but not limited to:-

- (i) The subject matter of the dispute or claim the subject matter of the arbitration; and
- (ii) The parties to the arbitration; and
- (iii) The nature of the reliefs sought; and
- (iv) Whether a Direction has been sought and/or granted; and
- (v) A summary of the final decision of the arbitrator; and
- (v) Such other information as may be determined by the PII committee from time to time.

The parties acknowledge that the PII committee shall have the power to direct the parties to any arbitration to provide such other information to the PII committee as may be determined by the PII committee from time to time.

The arbitrator shall have the power to direct, on an interim basis pending hearing or resolution of any arbitration without prejudice to any issue in dispute between the Insured and the Insurer, that the Insurer shall conduct any claim against the Insured, and/or advance Defence Costs to the Insured and/or, if appropriate, compromise and/or pay any Claim against the Insured, and/or such further or other interim relief as the arbitrator deems apposite; such a direction by the arbitrator to be known as a Direction.

The arbitrator may make a Direction, where in his sole discretion he considers that it is fair and equitable in all of the circumstances for such a Direction to be given. Such a Direction may be made following an application by the Insured, after allowing both the Insured and the Insurer an opportunity to make submissions as to whether such a Direction should be made, and where applicable, after receiving responses to any questions that the arbitrator may have regarding inter alia the degree of engagement between the Insurer and the Insured prior to the application for a Direction, and/or the degree to which the Insured has cooperated with the Insurer in relation to the provision of information and documentation relating to the Claim, and/or the degree to which the Insurer has theretofore assisted the insured with the Claim.

9.2 **Related Disputes**

Any dispute between the Insured and the Insurer as to any Claim or Circumstance under the Coverage shall be heard and determined in conjunction with any other related dispute between the Insured and the Insurer.

9.3 **Conduct of Claims**

The Coverage may provide that the Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Coverage may further provide that the Insurer shall be entitled to recover from the Insured by way of damages a sum equal

to the Insurer's loss arising from or connected with the Insured's failure to co-operate as required by the Coverage. For the avoidance of doubt, the Coverage may not permit the Insurer to refuse to pay any Claim, or to cancel, terminate or avoid the Coverage, due to the Insured's failure to co-operate as required by the Insurer.

SCHEDULE 1

Insured:

Coverage Period:

Excesses:

Premium:

SCHEDULE 2

Run-Off Rules