

Participating Insurers Agreement

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Subject to Privilege

The Council for Licensed Conveyancers (1)

and

.....
(2)

Participating Insurer Agreement 2016

Details of the Insurer

Company name (or managing agent of Syndicate) [for and on behalf of the members of the Syndicate specified below, for the [•] year(s) of account]

Company / syndicate number

Registered office

Telephone

Fax

Principal contact

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

Commencement Date: 1 July 2016

Details for service of notice in accordance with clause 12

Address

Contact name

Details to appear in CLC publications

Company/trading name

Postal address

Website address

Contact

Name

Telephone

E-mail address

Contact:

Underwriting	Claims
Reporting Officer	

Name
Telephone

.....
.....

E-mail address

Credit rating and
insurer financial strength
rating (or state
if none)

Name of rating agency

SAMPLE

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THIS AGREEMENT is made on

BETWEEN:

- (1) **THE COUNCIL FOR LICENSED CONVEYANCERS** (the **CLC**) of CAN Mezzanine, 49 - 51 East Road, London N1 6AH;
- (2) The company or managing agency (for and on behalf of the members of the specified Syndicate for the specified year(s) of account), the details of which are set out on page 2 (the **Insurer**).

WHEREAS

- (A) The CLC has, in exercise of its powers under, inter alia, section 21 of the Administration of Justice Act 1985 made Rules (in this Agreement referred to as **the Rules**) concerning indemnity against civil liability incurred by, amongst others, licensed conveyancers in private practice in England and Wales.
- (B) Pursuant to the Rules, Practices are required to take out professional indemnity insurance on at least the equivalent terms to the CLC PII Policy Wording, applicable for the relevant Policy Period with a Participating Insurer which has entered into a Participating Insurer Agreement with the CLC.
- (C) The purpose of this Agreement is to set out the terms and conditions on which the Insurer may provide professional indemnity insurance to Practices as required under the Rules.

IT IS AGREED AS FOLLOWS

1 Definitions and Interpretation

1.1 In this Agreement, unless the context requires otherwise:

Cessation means where the Practice ceases trading during the Policy Period.

Claims Report means a report issued in accordance with clause 4.8.

CLC or the Council for Licensed Conveyancers means the body established under the Administration of Justice Act 1985 to license and regulate licensed conveyancers and Practices in England and Wales.

CLC PII Policy Wording means the CLC Policy Wording and conditions with which a Policy is required to comply, being the terms and conditions required from time to time under the Rules.

Commencement Date means the first date on which Policies written by the Insurer may incept, being the date set out on page 2.

Declaration Premium Income means the aggregate of Premium Payable in respect of each Policy issued in the Policy Period by the Insurer to the extent that such premium relates to cover required in accordance with the CLC PII Policy Wording.

Glossary means the Glossary of Terms set out in the CLC Handbook.

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).

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

Participating Insurer means any Insurer entering into this Participating Insurance Agreement.

Participating Insurer Agreement means an agreement setting out the terms and conditions on which a Participating Insurer is or was entitled to provide professional indemnity insurance to Licensed Conveyancers in England and Wales from 1 July 2016.

Participating Insurer Minimum Rating means any Insurer entering into this Participating Insurance Agreement must have a minimum rating the equivalent to an A.M. Best Financial Strength Rating of A, or Standard & Poor's Financial Strength Rating of A. In relation to a Lloyd's Syndicate, the published ratings shall be that which applies to Lloyd's as a whole, provided Lloyd's continues to be rated as a single entity by A.M. Best or Standard & Poor's.

Policy means a contract of professional indemnity insurance made between the Insurer (whether alone or together with other Participating Insurers) and a Practice complying with the CLC PII Policy Wording in accordance with clause 2.2.

Policy Period means the period of insurance in respect of which risks may attach under a Policy.

Practice means an entity regulated by the CLC: a recognised body regulated by the CLC as an approved regulator or an alternative business structure (also called a licensed body) regulated by the CLC acting as a licensing authority.

Predecessor means a Recognised Body or Licensed Body whose Practice has been wholly or partially merged with or acquired by a Practice or one of its Predecessors.

Premium Payable means the amount of the premium (including all levies and charges relating to a Policy) due from a Practice to a Participating Insurer (excluding any amount in respect of Insurance Premium Tax) in respect of any Policy issued in the Policy Period, less any amount due to any intermediary acting as agent of the Practice for the purpose of obtaining professional indemnity insurance.

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

Run-off means continuing cover under the terms and conditions stated in the CLC PII Policy Wording itself, other than in respect of any claim or claims arising out of fraud or dishonesty.

Successor Practice means a Recognised Body or Licensed Body which has acquired or merged with the whole or part of a Recognised Body or Licensed Body.

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 CLC include any body or person which succeeds in whole or in part to the functions of the CLC 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:
- 2.1.1 issue Policies with an inception date on or after 1 July 2016;
 - 2.1.2 renew or replace any Policies; and
- at any time on or after the Commencement Date and before the Run-off Date to Practices 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 being the equivalent of terms issued under CLC PII Policy Wording in force on the later of the date on which:
- 2.2.1 the Policy incepts;
 - 2.2.2 any extension to the Policy Period takes effect; or
 - 2.2.3 the Policy is renewed or replaced.
- 2.3 The Insurer shall issue (or procure the issuing of) an Evidence of Insurance in the form set out in Part A to this Agreement to each Practice in respect of each Evidence of Insurance issued, renewed or replaced or where the Policy Period is extended (as the case may be) to that Practice by the Insurer within 30 days of such inception, extension, renewal or replacement of the Policy.
- 2.4 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.
- 2.5 Where the Insurer is the Lead Insurer (as defined in the CLC PII Policy Wording) 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 4.4 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.
- 2.6 The Insurer may not, under the terms on which it offers to issue any Policy or provides any quotation to a Practice (or to any intermediary in respect of a Practice), require that that Practice 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 a Policy on a separate and standalone basis from any other offer or quotation of insurance.
- 2.7 In the event of an inconsistency between the CLC PII Policy Wording 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 CLC PII Policy Wording, and shall, if and to the extent required, amend the terms of any Policy so that such Policy does give full effect to the CLC PII Policy Wording.
- 2.8 Clause 2.7 shall be directly enforceable against the Insurer by any Insured (as defined in the CLC PII Policy Wording) in his own right, where that Insured is required under the CLC PII Policy Wording 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.
- 2.9 Clause 2.8 shall be without limitation mutually to the right of the CLC 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 CLC that, both as at the date of this Agreement and as a continuing warranty and representation for the duration of this Agreement:
- 3.1.1 it is a Participating Insurer for the purposes of both effecting and carrying out contracts of insurance; and

- 3.1.2 it shall effect and carry out 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 Equality Act 2010.
- 3.2 The Insurer undertakes that it shall notify the CLC in writing immediately if, at any time after the date of this Agreement
- any warranty set out in clause 3.1 ceases to be true in any respect.

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 Practice in relation to arranging or effecting a Policy discloses to the Practice, 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 Practice.
- 3.4 Where the Insurer has delegated underwriting authority to one or more intermediaries for the purpose of effecting Policies, the Insurer must:
- 3.4.1 have in place at all times appropriate systems and controls to monitor and supervise the intermediary/ies for the purpose of ensuring that any such intermediary complies in full with all relevant laws and regulation and the terms of its delegated authority;
- 3.4.2 notify the CLC of the name and contact details of any such intermediary so appointed;
- 3.4.3 have entered into a written agreement with any such intermediary setting out the scope and terms of the underwriting authority conferred on the intermediary and provide to the CLC within seven days of being requested a copy of such agreement;
- 3.4.4 notify the CLC within seven days of the delegated authority conferred on the intermediary being withdrawn, suspended or terminated.
- 3.5 Where the Insurer has permitted any intermediary to sub-delegate its underwriting authority to any other person or persons (each, a **sub-delegate**), any such sub-delegate appointed by an intermediary shall itself be considered an intermediary for the purposes of clause 3.4.
- 3.6 The Insurer acknowledges and agrees that it shall be bound by the acts of any intermediary that it has appointed and any sub-delegate of such intermediary and that as a consequence it shall not dispute whether a Policy has been validly effected by the intermediary or sub-delegate, or deny a claim under a Policy effected by the intermediary or sub-delegate by reason of any act or omission of the intermediary or sub-delegate.

4 Obligations

General Reporting Obligations

- 4.1. If, in the course of dealing with any Practice:
- 4.1.1 the Insurer becomes aware of:
- (a) any matter or circumstances that would entitle it to avoid or repudiate a Policy but for the provisions of General Conditions 8.1 of the CLC PII Policy Wording (and/or the corresponding terms of the Policy);
- other than where the Insurer believes any relevant act or omission on the part of the Practice to have been innocent, or
- 4.1.2 the Insurer suspects or becomes aware of dishonesty or fraud on the part of that Practice or any insured under that Practice's Policy and as a result:
- (a) reserves its position as regards any part of a claim made by that Practice; or

- (b) notifies that Practice that it will not, or intends not to, indemnify that Practice in full in respect of a claim made by that Practice; or
 - (c) seeks, or reserves its right to seek, reimbursement of any amount paid out under any Policy from any insured,
- 4.1.3 the Insurer shall notify the CLC (or such person as the CLC 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 clause 4.1.1(a) ; and
 - (b) within 14 days from the date on which the Insurer takes any of the steps referred to in clauses 4.1.2(a) to 4.1.2(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 with the prior written consent of the Insured shall provide the CLC with such further information relating to the claim and the Practice concerned as the CLC may reasonably require from time to time so as to enable the CLC to investigate. If Insurers rely on this exclusion and the CLC, having become aware of the Insurers' intent, choose to make representations to Insurers, Insurers shall consider such representations promptly and in good faith and advise CLC and the Insured of their final decision after consideration of such representations.
- 4.2 If any Practice 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 CLC in writing of that fact.
- 4.3 The Insurer shall, within 14 days of any such request being made in writing by the CLC from time to time, provide to the CLC confirmation in writing that:
- 4.3.1 a specified Practice has taken out a Policy issued by that Insurer;
 - 4.3.2 such Policy is in force or was in force on a particular date and the expiry date of the Policy; and
 - 4.3.3 such Policy complies with the CLC PII Policy Wording in force on the date on which such Policy inception.
- 4.4 The Insurer shall provide to the CLC such information and data as the CLC may reasonably require from time to time to enable the CLC 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 Equality Act 2010. The provisions of clause 13 shall apply in respect of any information provided in accordance with this clause 4.4
- 4.5 If any of the information provided by the Insurer contained on page 2 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 CLC and each Practice to which it has issued a Policy as soon as practicable and, in any event, not later than seven days after such change.
- 4.6 Without prejudice to its obligation to notify the CLC, the Insurer shall have complied with the notification requirements under clause 4.5 insofar as they relate to advising each Practice of its credit rating and insurer financial strength rating where, in the reasonable opinion of the CLC, the Insurer has:
- 4.6.1 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 seven days of any variation; and
 - 4.6.2 at the inception, renewal or replacement of any Policy or the extension of the Policy, provided each Practice to whom it has issued such Policy with sufficient information to

enable the Practice to access the Insurer's credit rating and insurer financial strength rating information maintained on its website.

Claims Reports

- 4.7 The Insurer shall provide a report (a **Claims Report**) to any Practice, and where requested to CLC, to which it has issued a Policy, either in the current or in any previous Policy Period, within seven days from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:
- 4.7.1 a summary of:
- (a) each claim (or series of related claims) made against the Practice of which the Insurer is aware under each Policy; and
 - (b) any circumstances notified to the Insurer by the Practice under each Policy; and
 - (c) the amount reserved by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (d) the amount reserved for defence costs by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (e) any amounts paid out by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (f) the amount paid for defence costs by the Insurer against each claim (or series of related claims) or circumstances notified.

Reports on Insured Practices

- 4.8 The Insurer shall provide reports (**Insured Practices Reports**) to the CLC in respect of Policies written by a Participating Insurer during any Policy Period and in the form required from time to time. If there are no Insured Practices required to be included by the Insurer on any Insured Practices Report the Insurer shall instead provide a statement to that effect.
- 4.9 Each Insured Practices Report shall constitute confirmation that a Policy has been validly issued to each of the Practice listed in the Insured Practices Report and that the Insurer is on risk in accordance with the terms of the Policy. This clause 4.9 shall be directly enforceable against the Insurer by any insured in his own right in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy and shall be without limitation to the right of the CLC 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.

Run-off

- 4.10 The Insurer shall provide a report to the CLC within 14 days from being requested to do so, setting out, as at the date specified in the report:
- 4.10.1 the name of each Practice in respect of which run-off cover is being provided by the Insurer under a Policy issued in any Policy Period;
- 4.10.2 the date on which the Insurer believes that such run-off cover was triggered.
- 4.11 Each report shall constitute confirmation that run-off cover is being provided at no additional cost to the Practice at the point of Cessation by the Insurer in respect of each of the Practices listed in the Insured Practices Report and that the Insurer is on risk for run-off in accordance with the terms of the Policy, save where the Insurer subsequently confirms that any such Practice included in the report is insured as a Successor Practice within the meaning of and in accordance with the CLC PII Policy Wording. This clause 4.11 shall be directly enforceable against the Insurer by any insured in his own right in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy and shall be without limitation to the right of the CLC 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.

- 4.12 In the event that a Practice ceases to trade without a Successor Practice, then, for the purposes of the Policy, the ceased Practice is treated as going into "run-off". The run-off cover provides protection for the benefit of the former Principals and employees, their personal representatives and any prior practice but run-off cover will not apply to any client work conducted after the date of the Practice cessation other than concluding client matters and dealing with the orderly closure of the Practice.
- 4.13 Run-off cover may be cancelled at the request of the CLC to the Participating Insurer where the CLC mutually agrees with the Participating Insurer(s) to treat another Practice as a one and the same Practice as the run-off Practice and therefore deemed a Successor Practice.

Declaration Premium Income

- 4.14 The Insurer shall provide to the CLC a declaration in the form set out in Appendix 2 providing a figure for its Declaration Premium Income for the Policy Period by no later than 31 July 2016, and by no later than 31 July in any subsequent year. Monthly adjustments will be made for any Practices commencing to trade during the Policy Period.
- 4.15 The Insurer warrants and represents to the CLC that:
- 4.15.1 to the best of the knowledge information and belief of the Insurer the Declaration Premium Income declared pursuant to clause 4.14 does not materially understate the Declaration Premium Income as at the date of such declaration; and
 - 4.15.2 it has taken all reasonable steps to verify the accuracy of the declaration of its Declaration Premium Income made pursuant to clause 4.14 and that such declaration has been made in good faith.

Compliance with Reporting Requirements

- 4.16 The Insurer shall nominate a director or officer of the Insurer to be the person responsible for compliance with the reporting obligations under this clause 4 (the **Reporting Officer**).
- 4.17 The Insurer shall:
- 4.17.1 provide to the CLC the name, title and contact details of the Reporting Officer on or before the Commencement Date and advise the CLC promptly of any changes to such details for the term of this Agreement; and
 - 4.17.2 ensure that the Reporting Officer is appropriately authorised and has sufficient resources at all times to enable the Insurer to comply with its obligations under this clause 4.
- 4.18 In the event that the Insurer fails to comply with any of its obligations under this clause 4, the Insurer shall pay all costs and expenses incurred by the CLC (including the costs of engaging agents and advisors) in accessing the Records of the Insurer pursuant to clause 7.1.2. All such costs and expenses shall be paid by the Insurer within 30 days of receipt of an invoice issued to the Insurer by the CLC.

5 Claims Handling and Enforcement

- 5.1 The Insurer shall act at all times in all respects in accordance with clause 10 of this Agreement and the CLC PII Policy Wording.

6 Compliance with the CLC Code of Conduct

- 6.1 If any Practice fails to comply with the CLC Code of Conduct in relation to a Claim or otherwise, the Insurers may report such non-compliance to the CLC or any other relevant regulator. If any such report would breach the privilege, confidentiality or privacy of any client or former client of the Practice any such report shall be redacted so as to preserve the privilege, confidentiality or privacy

of the client or former client.

7 Rights of inspection

- 7.1.1 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 CLC may, in the case of any specified Policy, reasonably require.
- 7.1.2 The CLC (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 CLC, records of the Insurer at all times on reasonable notice during normal business hours.

8 Co-operation with the CLC

- 8.1 The Insurer shall at all times co-operate with the CLC, and with any person or body of persons carrying out any functions on behalf of the CLC, so as to enable the CLC to discharge its regulatory functions.
- 8.2 The Insurer authorises the CLC 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 2 (under the heading "Details of the Insurer") or as the Insurer may advise the CLC from time to time, including in accordance with clause 4.5.
- 8.3 The Insurer undertakes that it shall provide to the CLC, and shall specify on each Offer it provides to a Practice, 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).

9 Termination

- 9.1 The CLC 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:
 - 9.1.1 the Insurer is in fundamental breach of its obligations under this Agreement; or
 - 9.1.2 either of the events referred to in clause 3.1 occurs; or
 - 9.1.3 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 three months from the date the CLC 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.
- 9.2 The CLC may by giving not less than three months' notice in writing to the Insurer 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.
- 9.3 The effect of any notice given under clause 9.1 and 9.2 shall be that:
 - 9.3.1 (in the case where notice has been given under clause 9.1) the right granted to the Insurer under clause 2.1 shall terminate on:
 - (a) the date of termination specified in that notice; or
 - (b) the date on which either of the events referred to in clause 3.1 occurs (where applicable);whichever is the earlier; or
 - 9.3.2 (in the case where notice has been given under clause 9.2) the right granted to

the Insurer under clause 2.1 shall terminate on the date of the end of the first Policy Period ending not less than three months after the date on which notice under clause 9.2 is given.

- 9.4 The date on which the right granted to the Insurer under clause 2.1 terminates in accordance with clause 9.2 shall be referred to as the **Run-off Date**.
- 9.5 With effect from the Run-off Date, the Insurer shall cease to be a Participating Insurer and accordingly the Insurer shall not issue, renew or replace any Policy, or extend the Policy Period of any Policy after the Run-off Date, or hold itself out as being a Participating Insurer after the Run-off Date.
- 9.6 Clauses 9.4 and 9.5 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.
- 9.7 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.

10 Insurer Disputes

- 10.1 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:

10.1.1 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

10.1.2 where the parties to a dispute cannot agree in accordance with clause 10.1.1 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 a mutually agreed upon Queen's Counsel for resolution and in default of agreement to be nominated by the Chief Executive of the CLC. The costs of instructing Queen's Counsel shall be paid by the Insurers who ultimately undertake conduct of the claim.

- 10.2 In respect of any claim which is handled by another Participating Insurer or Participating Insurers in accordance with clause 10.1.2, 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:

10.2.1 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 claimants 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

10.2.2 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.

11 Other Disputes and Dispute Resolution

- 11.1 In respect of any dispute or claim arising out of or in connection with this Agreement, including any question regarding its validity or termination, the parties shall attempt, in good faith, to settle the dispute or claim by mediation on terms that are mutually agreed. Should mediation

be unsuccessful, the dispute or claim shall be finally settled by arbitration of a single arbitrator whose appointment is agreed by the parties.

- 11.2 If the parties cannot agree upon a single arbitrator, the dispute or claim shall be finally settled by the decision of two arbitrators (one to be appointed by each party) and in the case of disagreement between the arbitrators, by the decision of an umpire who shall have been appointed in writing by the arbitrators before entering into the reference. The decision of the arbitration shall be final and binding on both parties and responsibility for the costs of the arbitration shall be allocated as decided by the arbitrators. The provisions of the Arbitration Act 1996 shall apply to such arbitration.

12 Assignment

- 12.1 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.
- 12.2 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 CLC 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 without such prior consent.

13 Notices

- 13.1 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 email, to each of:

13.1.1 the Insurer, at the address, fax number or email address set out in and for the attention of the person named on page 2; and the Council for Licensed Conveyancers currently located at CAN Mezzanine, 49 - 51 East Road, London N1 6AH email Simon Blandy, Director of Regulatory Standards on simonb@clc-uk.org

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 13.

- 13.2 Any notice given in accordance with clause 13.1 shall be deemed to be given:

13.2.1 if delivered personally, when left at the relevant address referred to in clause 13.1.1;

13.2.2 if sent by mail, five days after it was posted;

13.2.3 if sent by fax or email, 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.

- 13.3 In proving the giving of a notice under this clause 13, 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 or email was sent in full to the relevant number or email address (as the case may be).

14 Confidentiality

- 14.1 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 CLC any matter referred to in the Rules:

14.1.1 the CLC shall keep all such information confidential;

14.1.2 the CLC shall not (except where and to the extent required by law or in the proper performance by the CLC of its regulatory functions) at any time reveal any such

information to any person other than a duly authorised employee of the CLC or any of its subsidiaries; and

14.1.3 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 CLC or otherwise.

14.2 The provisions of clause 14.1 shall not prevent the CLC making use of any information referred to in that clause for the purpose of bringing disciplinary proceedings against any person.

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

15 Counterparts

15.1 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.

16 Entire Agreement

16.1 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 CLC or any person acting for or on its behalf.

16.2 No variation to this Agreement shall be valid unless it is in writing and signed by or on behalf of the CLC.

17 Third Party Rights

17.1 Except as provided by clauses 2.8, 4.9 and 4.11 above 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.

18 Governing Law and Jurisdiction

17.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and that the courts of England and Wales shall have exclusive jurisdiction.

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

Where execution is by an insurer on its own behalf:

SIGNED by)
.....) Duly Authorised
for and on behalf of **THE COUNCIL**)
FOR LICENSED CONVEYANCERS)

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

Where execution is by a Lloyd's managing agent on behalf of a Syndicate:

SIGNED by)
.....) Duly Authorised
for and on behalf of **THE COUNCIL**)
FOR LICENSED CONVEYANCERS)

SIGNED by)
[managing agent]) Duly Authorised
for and on behalf of the members of)
Syndicate [•] for the [•] underwriting year of)
account)