



## **PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS**

### **Consultation Paper**

**January 2022**

#### **Consultation deadline**

This consultation will run for six weeks, from 14<sup>th</sup> January to 25<sup>th</sup> February, 2021.

# PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

## Background

All entities regulated by the CLC are required to have Professional Indemnity Insurance (PII) to protect their clients. With CLC-regulated entities entrusted with conveyancing and probate transactions that involve people's largest assets and life savings, PII is a vital element of consumer protection and the overall regulatory arrangements put in place by the CLC.

The CLC last reviewed its PII scheme in 2016. Following that root and branch review and consultation with the regulated community, insurers, and other stakeholders, the CLC moved to an open market PII scheme based on standard Minimum Terms and Conditions (MTC) and governed by a Participating Insurers Agreement (PIA). That PII cover must meet the CLC's MTC (and it may provide greater cover if the regulated entity believes that is appropriate) and it must be provided by one or more of the insurers that are party to the PIA. Those insurers must be rated at least 'A'.

The operation of a PII scheme engages the following Regulatory Objectives set out by the Legal Services Act 2007:

**RO1:** Protecting and promoting the public interest – *by a more responsive and suitable range of PII outcomes for the profession, and indirectly, their clients.*

**RO4** - protect and promote the interests of consumers – *by ensuring that effective PII is in place;*

**RO5** - promote competition in the provision of legal services – *by ensuring that competitively priced PII is available and access to the market is not disproportionately inhibited; and*

**RO6** - encourage an independent, strong, diverse and effective legal profession – *through affordable PII provision.*

The CLC's PII offers protection to clients of regulated entities, including mortgage lenders to those clients. It covers the regulated entity for civil liability incurred arising out of regulated services provided. It relates only to third party loss and not to losses incurred by the regulated entity. Therefore, regulated entities should also consider whether they need to have in place other insurance to protect itself and its officers such as separate cyber insurance to meet the cost of restoration of systems and data in the event of a cyber incidence and insurance to indemnify directors and officers against other claims arising from alleged wrongdoing in the course of their duties.<sup>1</sup>

In two separate working sessions over the past six months, the Council of the CLC has considered the issues and options raised through the review process and prepared the way for this formal consultation.

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<sup>1</sup> For further information on cyber insurance please refer to:  
<https://www.clc-uk.org/cyber-cover-in-pii-changes-to-the-clcs-minimum-terms-and-conditions/>

## This consultation

The passage of time since the current scheme was launched and the pressure of a hard market for PII prompted the CLC to issue a call for evidence about the operation of the scheme and the market in June 2021 as the first stage of a comprehensive review. The next stage was a series of conversations with insurers and brokers as well as discussions in open forums for the regulated community.

The CLC's open market scheme has worked well, enabling a choice of provider and generally lower cost insurance for the CLC's regulated community. Therefore this consultation is focused on those issues that have emerged over the course of the review as requiring consideration at this stage to address the current challenges in the PII market. It is also relevant that work by the LSB that is just beginning on the operation of PII across the legal sector might inform a further review in the coming years.

This consultation therefore sets out the CLC's proposals for limited changes to its PII scheme that seem appropriate to ensure that:

- it continues to operate effectively to protect the interests of clients;
- PII is affordable and proportionate for conveyancing and probate services that deliver the safe handling of the major personal assets of clients;
- it supports a healthy and competitive PII market; and
- it supports innovation and growth in the legal services market.

The proposals include potential amendments to the MTC and PIA. The current wording of those can be found at Appendices A and B respectively. We do not envisage any changes to the **CLC Professional Indemnity Insurance Framework** or **CLC Professional Indemnity Insurance Code and Guidance**

### Why this consultation is important to you

**Practices regulated by the CLC and their representative bodies** should consider how the options set out in this consultation could affect the protection of their clients, their business and themselves. The availability and pricing of effective PII cover is vital to the viability of legal service provision. *NB If your practice has concerns about the next PII insurance renewal, speak to your broker early and consult the CLC's most recent Risk Agenda for tips: <https://www.clc-uk.org/lawyers/risk-agenda/>*

**Clients of regulated entities and organisations representing consumers** should consider whether the options set out in this consultation have any negative or positive impact on client protection.

**Mortgage lenders and financial institutions working with probate providers** should consider whether the options set out in this consultation have any impact on the protection of their clients and themselves.

**Other organisations in the property and probate sectors** should consider whether the options set out in this consultation have any impact on the protection of their clients and themselves.

## **Responding to this consultation**

You can respond to the consultation by email to [consultations@clc-uk.org](mailto:consultations@clc-uk.org) or by post to: The Council for licensed Conveyancers, WeWork, 131 Finsbury Pavement, London, EC2A 1NT.

The CLC will publish all responses and may refer to any of them specifically in any further document it publishes following this consultation. If you wish your response to be treated as confidential, please let us know when you respond.

In addition to promoting this consultation paper, the CLC intends to hold further discussions with regulated entities, PII brokers and insurers, representative bodies for the regulated community. We will also circulate a brief questionnaire to gauge opinion on the key issues.

### **Consultation deadline**

This consultation will run for six weeks, from 14<sup>th</sup> January to 25<sup>th</sup> February, 2021.

### **Next steps**

The Council for the CLC will agree any changes to the PII scheme at its meeting on 10<sup>th</sup> March for submission to the LSB for approval ahead in good time for the 2021 PII renewal period in June.

## Introduction

At a workshop meeting in September 2021, the Council of the CLC discussed the broad lines for a review of the CLC's arrangements for Professional Indemnity Insurance (PII). The discussion was based on submissions to the call for evidence that ran from June to September 2021, and the CLC's own thinking on potential changes and ideas that had been passed to the CLC informally at private or public meetings.

Following that workshop, there were further discussions with the current brokers and insurers to the CLC's scheme within the parameters set by Council. In November 2021, the Council reviewed the key issues and options that had emerged from the review process since the beginning of the call for evidence in June. The Council agreed that the CLC should consult on possible amendments to the PII scheme in the following areas:

1. Breadth of cover provided by the MTC.
2. Temporary extension of cover in the event of sudden practice closure.
3. Ensuring that closing practices have run-off cover in place.
4. The approach to excesses set by insurers.
5. The need for a Participating Insurers Agreement.
6. Whether stand-alone cyber insurance should be mandatory.

The CLC is also proposing some amendments to MTC to reflect provisions of the 2016 Insurance Act. This is covered at 7, below.

In addition, the Council agreed some changes to working practices aimed at improving support for transferring practices and start-ups as they seek to secure PII. These do not require any amendments to the MTC or PIA.

## Breadth of cover provided by the MTC

### ***Breadth of general cover – narrowing cover by transaction type***

Another option which can be disposed of is the potential of narrowing cover to only very straightforward residential conveyancing transactions, as has been suggested during the review. Insurers have agreed that this is problematic and the CLC's view is that it would expose clients to risk arising from disputes about whether a particular transaction qualified for cover. It would also increase the exposure of the Compensation Fund, effectively transferring risk from the individual practice to the entire regulated community.

Alongside an unfair regulatory burden, this would also pose operational issues. For example, investigations under the Compensation Fund can be expensive. This could lead to a rise in costs later. Reliance on this model may also result in reputational and other impacts for the profession and clients under some scenarios, as the Compensation Fund does not have the same purpose as PII and is a discretionary fund.

### ***Breadth of general cover – narrowing cover by client type***

It has been suggested that lenders that experience a loss at the hands of a CLC-regulated entity could be excluded from recourse to compensation through PII. This is likely to

concern lenders considerably and it could damage significantly CLC-regulated firms' place in the market, but it is a point on which we have little evidence base of lender-based claims.

There has also been a suggestion that clients that are a business rather than an individual should also be ineligible to make a claim on the basis that they should not need the protection that a private individual needs. The CLC's view is that small businesses are in most respects like an individual in their vulnerability to the impact of errors made by lawyers. Indeed, according to the LSB small firms may need *more* protection. They have stated that there are high rates of problems they face, which can be greater than for some individuals.<sup>2</sup>

If businesses were to be excluded, a distinction would need to be made between small businesses and those that are sophisticated and sufficiently resourced to protect their own interests when engaging a lawyer. This would seem to indicate that only those businesses with an in-house legal function could be excluded from eligibility to make a claim. Given the profile of the work undertaken by CLC-regulated practices is overwhelmingly residential, this would have little positive impact on the availability or affordability of PII.

The CLC does not propose to make any changes to the breadth of cover provided by the MTC.

## **Extension of cover in the event of sudden closure**

The current MTC do not include provision for a short extension of full indemnity cover in the event that a practice is unable to renew PII cover at the end of an insurance year. A short extension would allow the practice to complete matters or arrange for their transfer to other practices for completion under full PII. It is not intended as an extension to the deadline for securing ongoing PII. Insurers have generally agreed to such extensions on a case-by-case basis, and it will be useful to systematise the approach.

The practice would not be able to take on any new instructions during the extended period of cover and that cover would be provided at no additional cost.

### ***Draft amended MTC for this approach***

#### ***1.18 Period of Insurance***

*Period of Insurance means the period specified as such in the Evidence of Insurance and shall, where the context requires, include any Extended Period of Insurance as provided for in clause 1.18A below.*

***1.18A*** *This Insurance will provide cover in accordance with the Insuring Clauses (but subject to the limits, exclusions and conditions of this Policy) for the period specified in clause 1.18B below ("the Extended Period of Insurance") if the Insured Practice has not, prior to the expiration of the Period of Insurance, either renewed this Insurance or obtained insurance that provides cover that is equivalent to and on terms no less favourable than this Insurance and that incepts on the day immediately following the expiration of the Period of Insurance.*

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<sup>2</sup> <https://legalservicesboard.org.uk/our-work/ongoing-work/the-legal-needs-of-small-businesses-2013-2020>

**1.18B** *The Extended Period of Insurance referred to in clause 1.18A above is the period commencing at the end of the Period of Insurance and ending on the earliest of:*

*1.18B.1 the date of inception of any insurance obtained by the Insured Practice that provides cover that is equivalent to and on terms no less favourable than this Insurance;*

*1.18B.2 the day on which the Insured Practice ceases; or*

*1.18B.3 the day which is 60 days after the end of the Period of Insurance*

### **CONSULTATION QUESTION 1**

Do you have any comments on the proposed automatic 60-day extension of PII cover in the event that a practice is unable to renew cover at the end of the insurance year?

## **Ensuring that closing practices have run-off cover in place**

The CLC's PII scheme is on a 'claims made' basis, meaning that the insurance purchased for a particular year covers claims made during that year regardless of when the incident giving rise to the claim occurred. For that reason, practices regulated by the CLC that cease to provide regulated legal services are required to have PII in place for six years following closure to ensure that claims in respect of past work are covered. This is called 'run-off' cover.

Section 5 of the Professional Indemnity Insurance Code states:

You ensure there are adequate indemnity **arrangements** in respect of **claims** made against you for work carried out by you before you ceased to practice by taking out **professional indemnity insurance** for a minimum period of 6 years from the expiry of the period of **professional indemnity insurance** stated in your evidence of insurance or policy document.

After the six-year period of run-off cover, clients with a claim may apply to the Compensation Fund managed by the CLC and funded by the regulated community. Very few claims are made to the Compensation Fund in relation to practices that ceased operating more than six years prior to the claim.

The very small number of relevant claims on the Compensation Fund indicates that the six-year period suffices to meet the vast majority of claims for the past work of closed practices. Likewise, there is no suggestion that the current run-off cover limit of £2m in aggregate for all claims is insufficient. Therefore the CLC sees no need to consider any changes to the nature and extent of run-off cover at this stage.

Before 2016, some closed firms did not purchase run-off cover, leaving consumers exposed to potential losses and adding to the potential burden on the Compensation Fund. Under the current scheme, run-off cover is integrated into annual PII. The insurer of a practice at the time that practice closes is required to provide run-off cover for six years at no further

cost to the practice. Some insurers have said that this makes it difficult for them to provide competitively priced cover and it seems that the risk to the insurer of the potential need to provide run-off cover has not been priced into annual premiums by those insurers. This has contributed to the challenge of the insurance market as it seeks to improve sustainability and profitability.

The CLC regards integrated run-off cover as a key aspect of consumer protection as it guarantees that there is provision for claims against closed practices. However, during the period of this review, four possible amendments to the current run-off provisions emerged:

- Reducing the extent of cover
- Requiring payment of an additional premium for run-off cover other than in limited circumstances
- Allowing insurers to seek payment of an additional premium for run-off cover without making payment a condition of cover
- Potential run-off premium being held by practices/a CLC scheme to meet costs of run-off premiums

We will now look at each of these in turn.

### ***Reducing the extent of cover***

One organisation consulted by the CLC noted that the limit of run-off cover of £2m for all claims in the six-year period could be reduced significantly because claims in respect of closed practices almost always amount to far less than £2m. The suggestion is that consumer protection could be secured by a lower limit.

However, it has also been pointed out that insurers' approach to run-off takes account of the actual exposure they face being in effect far lower than £2m and so a reduction in the limit would not have an impact on insurer participation in the market, nor reduce premiums. A reduction in cover would increase the exposure of the Compensation Fund, and so increase the burden on the regulated community. Therefore, the CLC sees no case for further consideration of this idea.

For similar reasons, there is no need to move away from an aggregate limit of £2m for all claims in the run-off period to a basis which would set a limit for each and every claim made.

### ***Requiring payment of an additional premium for run-off cover in all but limited circumstances***

Limiting the availability of run-off cover free at the point of closure depending on the circumstances of that closure could be a way to meet the concerns of some insurers about integrated run-off cover but it opens risks to consumer protection.

In this approach, run-off would be provided without additional payment by insurers in the event of an intervention by the CLC or other unplanned closure of a practice. Where practices are winding up in an orderly fashion it is reasonable to expect those business to make provision for run-off cover. In the case of a practice moving out of regulation by the CLC but that is continuing to operate under other regulation, the CLC would hope that the

insurer would provide unbroken cover with no need to cover past work through run-off. (That is the CLC's expectation in the case of practices transferring into CLC regulation.)

The provision of run-off without payment of an additional premium would be limited to the following causes of practice closure:

- a. An intervention into the practice by the CLC;
- b. Death, long-term severe illness or incapacitation of a principal leading to closure of the practice;
- c. Because the practice is unable to renew PII; or
- d. Insolvency of the practice.

In all other circumstances an additional premium payment for run-off cover would be required. When a practice is closing, it would be free to source run-off cover from any insurer that is signed up to the PIA.

However, this approach would open the possibility of a closed practice not purchasing run-off cover. This would require the CLC to pursue the practice to enforce payment where possible. This would cause an unjustifiable reduction in client protection and expose the Compensation Fund to greater risk. Therefore it is not an approach the CLC intends to pursue.

***Allowing insurers to seek payment of an additional premium for run-off cover without making payment a condition of cover***

The Council of the CLC has ruled out moving away from integrated run-off cover entirely on the basis that it would open clients and the Compensation Fund to considerable risk. However, an alternative approach would require run-off to be funded by an additional premium but to prohibit insurers from making the payment of the run-off premium a condition of cover. It would be the responsibility of the insurer to enforce payment of the premium, but non-payment of that premium could not result in withdrawal of run-off cover.

This approach would ensure that all closed practices have run-off cover but allow insurers to secure a premium for that cover wherever possible. It would naturally ensure that practices that close because of intervention, death or insolvency had run-off cover in place, because it would be automatic.

Some insurers have indicated support for such an approach. It could encourage more insurers to enter the market by reducing insurers' risk of exposure without additional premiums in the event of practice closure. It would not appear to impact client protection that is currently secured through integrated run-off cover. However, the CLC would need to be convinced by insurers that it is an approach that they would accept for the long term.

***Draft amended MTC for this approach***

***8.11 Scope of run-off cover***

*This Insurance will provide run-off cover in the circumstances set out in General Conditions 8.10 above and in accordance with the Insuring Clauses (but subject to the limits,*

*exclusions and conditions of this Policy) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement it would have ended).*

*8.11 A The provision of run-off cover may result in an additional premium being payable, but it is not a condition precedent of run-off cover being provided that such premium is paid.*

### **Run-off cover – premium held in escrow/CLC runs scheme to cover annual run-off costs**

Two further alternative arrangements have been floated in recent years.

The first is requiring firms to always hold a sum equivalent to the likely cost of run-off. This is rejected because of the disproportionate burden it would represent to practices.

The second is the suggestion that the CLC could manage a scheme that collects money from across the regulated community to create a fund to pay run-premiums where they are needed. Such funds could perhaps be collected annually from practices rather like contributions to the Compensation Fund. This is rejected because it would represent an unfair burden on the majority of practices as they would be funding the needs of a very small minority.

### **CONSULTATION QUESTION 2**

- a. If the MTC were to be amended to require the last insurer of a practice to provide run-off cover even if it is unable to collect the expected premium, compared to retaining integrated run-off cover would this have any positive or negative impact on:
  - i. client protection?
  - ii. the availability of choice of PII cover for CLC-regulated practices?
  - iii. the price of PII cover?
- b. Insurers are asked to confirm that they would always provide run-off insurance when a practice has not paid a run-off premium.
- c. Practices are asked to comment on how they would propose to fund the purchase of run-off cover in the event of closure given that retaining a large sum in reserve for that eventuality would be likely to be unviable.

## **The need for a Participating Insurers Agreement (PIA)**

The CLC operates a Participating Insurers Agreement, which all insurers to the scheme must sign up to. It sets out standards that insurers must meet in the provision of PII beyond adherence to the MTC, including reporting to the CLC, and the requirements for run-off cover. As such, it is a cornerstone of the protections afforded by the PII scheme.

It was suggested by a member of the regulated community that abandoning the PIA could make it easier for new insurers to enter the market. However, at time of writing, no objection has been lodged to the PIA and no insurers have indicated that it inhibits market

entry or competition in the market. If the PIA were not used as a way of managing the scheme, elements of it would need to be reproduced in the CLC's PII Code or in the MTCs as a way of securing the outcomes the PIA currently secures. Accordingly, the CLC's view is that the PIA should be retained.

### **CONSULTATION QUESTION 3**

Do you consider that there is any reason to move away from the PIA that would outweigh the potential impact on consumer protection? Could the same standards of PII be secured in a different way?

## **The role of excesses**

Under the current scheme, the CLC sets a maximum level of excess payments by insured practices based on the turnover of those practices. That is intended to protect the financial stability of those practices. At time of writing, the preference of some insurers is to be free to set excesses at any level they choose. They say that this enables them to deliver affordable premiums and to direct insured practices away from higher-risk types of work.

While this may seem a reasonable tool if used within reasonable bounds, we have seen attempts by some insurers to set very high levels of excess in relation to particular types of work which, if they were applied to even a small number of claims, could make the insured practice insolvent. This seems to the CLC to present a risk to clients, though insurers would argue that it motivates the insured practice to avoid the targeted types of work and so decreases risk.

The CLC proposes that it should continue to set maximum excess levels based on practice turnover but allow insurers to depart from those levels where the insurer can justify a higher excess level to the CLC. This approach could allow the CLC to deepen its insight into the use of excesses and their role in the market. The CLC does not propose extending this approach to penalty excesses at this stage as there has been no evidence so far that these present a problem.

### ***Draft amended MTC for this approach***

#### **1.12 Excess**

*Excess means the applicable amounts stated in the Evidence of Insurance for which the Insured is responsible under this Policy in respect of any one Loss or Claim against the Insured. The Excess shall not apply to Defence Costs. The Excess does not reduce the limit of liability of the Insurers.*

**1.12A** *Subject to clause 1.12B below, the Excess shall be in an amount not exceeding £3,500 or the sum produced by the following formula if that is greater:*

*(i) 5% Fees (as defined in the CLC's PII Policy Wording) where the Fees are no more than £200,000; plus*

*(ii) 3% Fees on Fees between £200,001 and £500,000; plus*

*(iii) 2% Fees on Fees between £500,001 and £1,000,000.*

**1.12B** *The Excess may be in an amount exceeding the sum produced by the formula set out in clause 1.12A above if (and only if) the CLC provides written approval of such higher amount.*

#### **Corresponding Amendment to PIA**

**2.10** *If the Insurer wishes to set an Excess (as defined in the CLC PII Policy Wording) that is in an amount exceeding the sums produced by the formula set out in clause 1.12A of the CLC PII Policy Wording, it shall provide written representations to the CLC to explain why it considers such higher excess to be justified. On receipt of any such representations the CLC may, in its absolute discretion, provide the Insurer with written approval to set the Excess in the amount requested by the Insurer, or in such lower amount as the CLC considers appropriate. For the avoidance of doubt, the CLC may not require the Insurer to set an Excess that is, in either case, below the amount produced by the formulae set out in clauses 1.12A of the CLC PII Policy Wording.*

#### **CONSULTATION QUESTION 4**

Does the retention of the excess limit in all but exceptional cases have any impact on consumer protection or the availability or cost of PII? What positive or negative impacts could the removal of the excess limits have?

### **Whether stand-alone cyber insurance should be mandated**

The CLC amended the MTC in autumn 2021 to meet the requirement for clarity in relation to cyber cover in PII. The intention was to clarify what was already covered in terms of civil liability and what was not in terms of the costs of restoring systems and data.

Some PII insurers already require their insureds to take out stand-alone cyber insurance to cover those costs of restoration and others have suggested that the CLC should make this mandatory. For the moment, it may be that this is an issue that the market could resolve.

Cyber incidents present a clear risk to clients and the costs of restoring systems and data quickly and effectively to protect client interest are likely to be very significant in most cases, potentially representing a threat to an affected practice's financial viability and thus a further risk to the client interest.

Furthermore, claims under PII in the event of a cyber incident could be very considerable if the affected practice is not able to recover any affected systems and data effectively to allow transactions to progress with minimal delay. We believe that it is likely that these and other evolving forms of cyber risk could become more complex and proliferate.

A decision to make cyber cover mandatory would not entail changes to the MTC or PIA at this stage. We are seeking views on whether the CLC should make such cover mandatory alongside PII or whether insurers will themselves require it without regulatory intervention. A third approach might be for the CLC to require a practice to have cyber cover unless it can explain why it is unnecessary.

#### **CONSULTATION QUESTION 5**

- a. Could there be any negative impacts from the CLC making cyber cover compulsory for all regulated practices?
- b. Can the CLC rely on the insurance market and regulated entities working together to address the risk of cyber incidents to clients and practices?

## Insurance Act 2015

Based on legal advice, the CLC proposes to amend clause 8.1 (“Innocent Non-Disclosure”) of the MTC to ensure it is compliant with the terms of the Insurance Act 2015.

Clause 8.1 currently provides, in outline, as follows:

- (i) Insurers will not avoid the policy for “non-disclosure or misrepresentation of facts or untrue statements in the proposal form” if the Insured proves that it was “free of any fraudulent intent” (clause 8.1).
- (ii) If the Insured fails to prove its innocence, then:
  - (a) No indemnity will be provided for claims “arising from or connected with” the non-disclosure etc. (clause 8.1.1).
  - (b) Indemnity will be provided for claims “not arising from or connected with” the non-disclosure etc. (clause 8.1.3).
  - (c) If a claim is paid, despite a fraudulent non-disclosure having been made, then the Insured shall at either the CLC’s or Insurers’ request:
    - a. seek to obtain reimbursement “of the benefit of this Policy” from the relevant Principal “concerned in or making” the fraudulent non-disclosure (clause 8.1.5.1); and
    - b. procure that any money “due to” the Principal in question shall be paid to Insurers “up to but not exceeding” claims etc. that are “consequent upon” the fraudulent non-disclosure etc. (clause 8.1.5.2).

The language of “non-disclosure, misrepresentation or untrue statement” needs to be amended to reflect the terminology of IA 2015, specifically the concept of “the duty of fair presentation”. The CLC therefore proposes to:

- (iii) Add a new definition for “Duty of Fair Presentation”, defined as “The duty of fair presentation within the meaning of section 3 of the Insurance Act 2015”.
- (iv) Change “non-disclosure or misrepresentation of facts or untrue statements” to “a breach of the Duty of Fair Presentation”.
- (v) Change “fraudulent” (and related terms) to “deliberate or reckless” (to reflect section 8 of IA 2015).

Secondly, whilst the existing MTCs already give effect to the requirement of IA 2015 that insurers may not avoid policies on the ground of *innocent* non-disclosure, they contravene the Act by requiring the insured to prove its innocence, whereas section 8(6) of IA 2015 provides that it is for the insurer to prove that a breach was “deliberate or

reckless”.

### **Draft amended MTC**

#### **8.1 Innocent Non-Disclosure**

*Insurers will not avoid this Insurance where it is alleged that there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form provided always that the Insurer does not establish that such alleged non- disclosure, misrepresentation or untrue statement was deliberate or reckless.*

*If the Insurer establishes that the breach of the Duty of Fair Presentation was deliberate or reckless:*

*8.1.1 the Insured shall not be entitled to indemnity in respect of any Claim, Defence Costs or Loss arising from or connected with the breach of the Duty of Fair Presentation;*

*8.1.2 if Insurers intend to deny indemnity on the basis of General Conditions 8.1.1, CLC, having become aware of Insurers’ intention, may, if they consider it appropriate, make representation to Insurers. Insurers shall consider such representations promptly and in good faith and advise the CLC of their final decision after consideration of such representations;*

*8.1.3 the Insured shall be entitled to indemnity in respect of any other Claim, Defence Costs or Loss not arising from or connected with the breach of the Duty of Fair Presentation whether or not the Claim, Defence Costs or Loss arise or are notified to Insurers before or after discovery by Insurers of the breach of the Duty of Fair Presentation;*

*8.1.4 the Insurers are not entitled to avoid or repudiate this Policy on any grounds whatsoever including, without limitation, non-disclosure, misrepresentation, breach of warranty, condition or condition precedent save as set out in Exclusions 5.12 and General Conditions 8.6;*

*8.1.5 Without prejudice to clauses 8.1.1 and 8.1.3 above, if the Insured knowingly or recklessly commits or condones a breach of the Duty of Fair Presentation, then the Insured shall reimburse the Insurers to the extent that it is just and equitable having regard to the prejudice caused to the Insurer by such breach.*

#### **CONSULTATION QUESTION 6**

Do you have any comments on the proposed revisions to Clause 8.1 of the MTC that aim to make it compliant with the Insurance Act 2015?

#### **CONSULTATION QUESTION 7**

Do you have any other observations on the proposals in this consultation paper, the CLC’s PII scheme in general or the operation of the PII market for the CLC regulated community or wider legal sector?

## **SUMMARY OF CONSULTATION QUESTIONS**

### **CONSULTATION QUESTION 1**

Do you have any comments on the proposed automatic 60-day extension of PII cover in the event that a practice is unable to renew cover at the end of the insurance year?

### **CONSULTATION QUESTION 2**

- a. If the MTC were to be amended to require the last insurer of a practice to provide run-off cover even if it is unable to collect the expected premium, compared to retaining integrated run-off cover would this have any positive or negative impact on:
  - i. client protection?
  - ii. the availability of choice of PII cover for CLC-regulated practices?
  - iii. the price of PII cover?
- b. Insurers are asked to confirm that they would always provide run-off insurance when a practice has not paid a run-off premium.
- c. Practices are asked to comment on how they would propose to fund the purchase of run-off cover in the event of closure given that retaining a large sum in reserve for that eventuality would be likely to be unviable.

### **CONSULTATION QUESTION 3**

Do you consider that there is any reason to move away from the PIA that would outweigh the potential impact on consumer protection? Could the same standards of PII be secured in a different way?

### **CONSULTATION QUESTION 4**

- a. Does the retention of the excess limit in all but exceptional cases have any impact on consumer protection or the availability or cost of PII?
- b. What positive or negative impacts could the removal of the excess limits have?

### **CONSULTATION QUESTION 5**

- a. Could there be any negative impacts from the CLC making cyber cover compulsory for all regulated practices?
- b. Can the CLC rely on the insurance market and regulated entities working together to address the risk of cyber incidents to clients and practices?

### **CONSULTATION QUESTION 6**

Do you have any comments on the proposed revisions to Clause 8.1 of the MTC that aim to make it compliant with the Insurance Act 2015?

### **CONSULTATION QUESTION 7**

Do you have any other observations on the proposals in this consultation paper, the CLC's PII scheme in general or the operation of the PII market for the CLC regulated community or

wider legal sector?

## **Appendix 1**

### **Current CLC PII Policy Wording as reflected in the Participating Insurers Agreement and setting out the Minimum Terms and Conditions following clarification of cyber, effective from 1<sup>st</sup> October 2021**

#### **1. DEFINITIONS**

Throughout this Policy, the following words shall have the meanings given to them in this Definitions section.

##### **1.1 Associated Entities**

Associated Entities means practices, whether regulated by the CLC or not, whose Professional Business includes the conduct of Estate Planning and Probate Services and which have common ownership within the Insured Practice.

##### **1.2 Claim**

Claim means a demand for, or an assertion of a right to, compensation or damages or an intimation of an intention to seek compensation or damages in respect of any civil liability whatsoever.

##### **1.3 Claims Series**

For the purpose of determining the Insurers' liability or the amount of the Excess or Penalty Excess, one Claim means:

- 1.3.1 all Claims against any one or more Insured arising from:
  - 1.3.1.1 one act or omission;
  - 1.3.1.2 one series of related acts or omissions;
  - 1.3.1.3 the same act or omission in a series of related matters or transactions;
  - 1.3.1.4 similar acts or omissions in a series of related matters or transactions;
- 1.3.2 all Claims against one or more Insured arising from one matter or transaction will be regarded as one Claim;
- 1.3.3 all Claims or losses stemming from the dishonesty of one person or persons acting in collusion shall constitute a single Claim or Loss.

##### **1.4 CLC**

CLC means the Council for Licensed Conveyancers established under Section 12 of the Administration of Justice Act 1985.

## **1.5 Circumstances**

Circumstance means information or facts or matters of which the Insured is aware which the Insured believes may give rise to a Claim against the Insured for which the Insured could become legally liable.

## **1.6 Code of Conduct**

Code of Conduct means the Code of Conduct promulgated by CLC.

### **1.6A Computer Network**

*Computer Network means a group of Computer Systems and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked devices to exchange Data.*

### **1.6B Computer System**

*Computer System means any computer, hardware, software, application, process, code, programme, information technology, 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 device, output device, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.*

### **1.6C Data**

*Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System or Computer Network.*

## **1.7 Defence Costs**

Defence Costs means all costs and expenses reasonably and necessarily incurred by the Insured with the Insurers' prior written consent (such consent not to be unreasonably withheld):

- 1.7.1 in the defence or settlement of any Claim;
- 1.7.2 in conducting any proceedings for indemnity, contribution or recovery relating to a Claim;
- 1.7.3 in investigating, reducing, avoiding or compromising any actual or potential Claim;
- 1.7.4 in relation to any Circumstances as defined in Definitions 1.5. Defence Costs do not include the salaries or office expenses of the Insured.

## **1.8 Documents**

Documents means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms,

computer programmes or information stored, written or punched into card or tape or magnetic discs or tapes or any other data media, and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments), the property of or entrusted to the Insured, which may now or hereafter be, or be supposed or believed to be, in the custody of the Insured, or in the custody of any other person to or with whom such Documents have been entrusted, lodged or deposited by the Insured in the ordinary course of business.

### **1.9 Employee**

Employee means any person other than a Principal:

- 1.9.1 employed or otherwise engaged in the Insured Practice (including under a contract for services) including, without limitation, office or clerical staff members;
- 1.9.2 seconded to work in the Insured Practice; or
- 1.9.3 seconded by the Insured Practice to work elsewhere.

Employee does not include any person who is engaged by the Insured Practice under a contract for services in respect of any work where that person is required under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

### **1.10 Estate Planning and Probate Services**

Estate Planning and Probate Services means advice given and services performed as estate planning or administration consultants (including without limitation advice and services performed in connection with will drafting, will storage, advance directives, joint tenancies, establishment of trusts, powers of attorney, codicils and pre-paid funeral plans) or probate specialists.

### **1.11 Evidence of Insurance**

Evidence of Insurance means the certificate provided by Insurers representatives to the Insured confirming that the Insured is entitled to indemnity under the terms of this Policy.

### **1.12 Excess**

Excess means the applicable amounts stated in the Evidence of Insurance for which the Insured is responsible under this Policy in respect of any one Loss or Claim against the Insured. The Excess shall not apply to Defence Costs. The Excess does not reduce the limit of liability of the Insurers.

### **1.13 Insured**

The Insured means:

- 1.13.1 the Practice;
- 1.13.2 any Principal or former Principal thereof;
- 1.13.3 any person who is a consultant to or an associate in the Practice;
- 1.13.4 any Employee or former Employee who is or has been under a contract of service for and/or on behalf of the Practice;

- 1.13.5 any Locum appointed by the Practice who shall for the time being carry out the duties of any person conducting Professional Business on behalf of the Practice;
- 1.13.6 the estate and/or the personal representatives of any of the foregoing;
- 1.13.7 any Predecessor.

Each of the foregoing are severally insured hereunder.

#### **1.14 Insurers**

Insurers mean those participating Insurers registered with the CLC to provide insurance on behalf of the Practices regulated by the CLC and whose names and percentage of the risks and liabilities underwritten by them are identified in the Evidence of Insurance. The Insurers named thereon bind themselves each for their own part and not one for another. Each Insurer's liability under this insurance shall not exceed the percentage or amount of the risk shown against that Insurer's name.

#### **1.15 Licensed Body**

Licensed Body means a body which holds a licence in force under Part 5 of the Legal Services Act 2007 issued by the CLC.

#### **1.16 Loss**

Loss means the indemnity provided by Insurers to the Insured pursuant to Insuring Clauses 2 of this Policy.

#### **1.17 Penalty Excess**

Penalty Excess means the amount (set out in the Evidence of Insurance) for which the Insured is responsible under this Policy in respect of any one Loss or Claim against the Insured arising out of:

- 1.17.1 the Insured's failure when acting in the purchase of a property to obtain an appropriate undertaking in relation to the redemption/removal of all existing charges or restrictions and/or other encumbrances contained within either the proprietorship or charges register of the title(s) maintained under the Land Registration Act 2002 and relating to the property;
- 1.17.2 the Insured's failure when acting on behalf of the purchaser following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry relating to the seller is entered on the register maintained under the Land Registration Act 2002 by a third party and which enjoys priority over those entries intended to be made by the purchaser and his or her lender;
- 1.17.3 the Insured's failure when acting in relation to the sale of a property to retain sufficient funds when accounting to the vendor to redeem a charge or release a restriction having given an undertaking to do so and which the Insured is obliged to comply with despite the funds have been released to the client;

1.17.4 the Insured's failure when acting in relation to a re-mortgage of a property to retain sufficient funds when accounting to the borrower to redeem any pre-existing charge or release a restriction on completion or following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry is entered on the register maintained under the Land Registration Act 2002 in priority to that of the lender instructing the Insured;

1.17.5 the application of the provisions of Exclusions 5.12.

If a Penalty Excess is applicable in accordance with Definitions 1.17.1 to 1.17.5 above then it shall apply in substitution for, and not in addition to, the Excess defined in Definitions 1.12.

The Penalty Excess shall not apply to Defence Costs.

### **1.18 Period of Insurance**

Period of Insurance means the period specified as such in the Evidence of Insurance.

### **1.19 Practice**

Practice means the Recognised Body or Licensed Body named in the Evidence of Insurance and shall include any Practice which is the Predecessor or Successor to that Practice.

### **1.20 Predecessor**

Predecessor means a Recognised Body or Licensed Body whose Practice has been wholly or partially merged with or acquired by the Insured Practice or one of its Predecessors to be insured under this insurance through the application of provisions equivalent to those in General Conditions 8.11 in the Successor Practice's insurance policy.

### **1.21 Principal**

Principal means a person who is a sole practitioner or a partner or a director of a Practice and shall include any such person held out as a Principal.

### **1.22 Professional Business**

Professional Business means, unless otherwise excluded by this Insurance, any advice given or services performed including professional services carried out by or on behalf of the Insured Practice or an Insured or any person or entity for whom the Insured Practice is legally responsible provided always:

1.22.1 that such advice or services form part of the professional services provided by the Insured Practice; and

1.22.2 that any entitlement to any fee or a portion of any fee accruing from such work shall inure to the benefit of the Insured Practice or other person or entity for whom the Insured Practice is legally responsible; or

1.22.3 that if such work is done for a fee which does not inure to the benefit of the Insured Practice or is done without fee, that it is undertaken in the name of or on behalf of the Insured Practice or any other person or entity for whom the Insured Practice is legally responsible.

### **1.23 Recognised Body**

Recognised Body means a body corporate for the time being recognised by the CLC under Section 32 of the Administration of Justice Act 1985.

### **1.25 Successor Practice**

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 and the acquired or merged Body has not exercised its right to invoke the Run-off cover under the terms of General Conditions 8.11 of this Policy.

### **1.25 Terrorism**

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

## **2. INSURING CLAUSES**

### **2.1 Civil Liability**

The Insurers, to the extent and in the manner provided in this Policy, agree to indemnify the Insured against any Claim or Claims first made or intimated against the Insured during the Period of Insurance arising from Professional Business undertaken by the Insured or by any person acting on behalf of the Insured or for whom they are responsible or by one or more of its' Associated Entities on or after the date when the Insured first became regulated by the CLC.

### **2.2 Loss of Documents**

The Insurers, to the extent and in the manner provided in this Policy, agree to indemnify the Insured against costs and expenses incurred by the Insured in replacing or restoring Documents which the insured discovers during the Period of Insurance and after diligent search to have been destroyed, damaged, lost or mislaid, provided that any claim for such costs or expenses shall be supported by bills or accounts approved by a competent person to be nominated by the Insurers with the approval of the Insured.

### **2.3 Regulatory Indemnity**

The Insurers, to the extent and manner provided in this Policy, agree to indemnify the Insured up to but not exceeding the Sum Insured and subject to the Excess against any amount paid or payable in accordance with the recommendation or determination of the Legal Ombudsman or the Ombudsman appointed by the Financial Conduct Authority provided that the Insurers shall have no liability in respect of any determination or award requiring the Insured to refund any fees paid to the Insured.

### **3. PREMIUM**

#### **3.1 Payment of Premium**

Each Practice in respect of its business shall pay or cause to be paid a premium agreed with the Insurers.

### **4. SUM INSURED**

#### **4.1 Sum Insured**

The liability of the Insurers in respect of each Claim or Loss shall not exceed the Sum Insured specified in the Evidence of Insurance for the total of all damages, interest and costs awarded against the Insured or agreed between the Insured, the claimant and the Insurers in excess of the Excess or, if applicable, the Penalty Excess.

#### **4.2 Defence Costs**

(This clause 4.2 shall not apply to indemnification provided by Insuring Clauses 2.2, Loss of Documents)

In addition, the Insurers will pay all Defence Costs as and when they are incurred provided that, if a payment in excess of the said Sum Insured is made to dispose of any such Claim the Insurers' liability for any such Defence Costs so incurred shall be limited to such proportion thereof as the said Sum Insured bears to the amount of the payment so made.

### **5. EXCLUSIONS**

#### **5.1 Any business controlled by any Principal**

This insurance shall not indemnify any Principal in respect of any Claim(s) or Loss(es) or Defence Costs arising out of any transaction or professional services in which any Principal or any person acting in concert with him or on his behalf acted for:

- 5.1.1 that Principal or any other Principal of the same Practice; or
- 5.1.2 that Principal's spouse or children or the spouse or children of any other Principal of the same Practice; or
- 5.1.3 any business, firm, company, enterprise, association or venture owned or controlled by said Principal or any other Principal.

This Exclusions 5.1 shall not apply to the extent that the Principal shall establish that any such transaction or professional service was conducted or provided by him or on his behalf:

- 5.1.4 without that Principal (or any person providing the service on his behalf) knowing that the service provided was or was likely to be undertaken for the persons or entities described in Exclusions 5.1.1 to 5.1.3 above;
- 5.1.5 with the full knowledge and agreement of any other party involved in the same transaction and for whom the Practice also acted in connection with that transaction.

In any Claim or Loss and in any proceedings to enforce a claim for indemnity under this Policy, the burden of proving that such indemnity does not fall within Exclusions 5.1 shall be upon the Insured and the cost thereof will not be recoverable under this Policy.

#### **5.2 Excess or Penalty Excess**

Insurers shall not be liable for the amount of the Excess or, if applicable, the Penalty Excess.

#### **5.3 Bodily injury or physical damage**

This Policy shall not indemnify the Insured in respect of any Claim or Loss for death or bodily injury (including sickness, mental stress or disease) or physical loss of or physical damage to property of any kind whatsoever except property in the care, custody and control of the Insured in connection with the Professional Business of the Practice for which the Insured is responsible and not being property occupied or used by any of the Insured for the purposes of the Practice.

#### **5.4 Wrongful dismissal/termination**

This Policy shall not indemnify the Insured in respect of any Claim or Loss:

- 5.4.1 arising from wrongful dismissal or any other alleged breach or any other relief in respect of any contract of employment by the Insured; and/or
- 5.4.2 for wrongful termination or any other alleged breach or any other relief 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.

#### **5.5 Payment of a trading debt**

This Policy shall not indemnify the Insured in respect of any Claim or Loss concerning the payment of a trading debt incurred by the Insured.

#### **5.6 Circumstances notified to other insurance**

This Policy shall not indemnify the Insured in respect of any Claim or Loss in respect of any Circumstances or occurrences which have been notified under any other insurance attaching before the inception of this Policy.

#### **5.7 Radioactive contamination**

This Policy shall not indemnify the Insured in respect of any Claim or Loss directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **5.8 Sonic Boom**

This Policy shall not indemnify the Insured in respect of any Claim or Loss directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

## **5.9 War, terrorism, asbestos and toxic mould**

This Policy shall not indemnify the Insured in respect of the liability of any Insured in respect of, or in any way connected with or arising directly or indirectly out of:

- 5.9.1 Terrorism, war or other hostilities; and/or
- 5.9.2 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
- 5.9.3 the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind.

However, with the exception of costs and expenses incurred by the Insured in replacing or restoring Documents this exclusion shall not apply to the liability of the Insurers to indemnify any Insured against any Claim or related Defence Costs arising from the matters referred to in Exclusions 5.9.1 to 5.9.3 inclusive.

## **5.10 Practice outside England or Wales**

This Policy shall not indemnify the Insured in respect of any Claim or Loss in respect of any liability incurred in connection with:

- 5.10.1 a Practice conducted wholly or partly outside England or Wales;
- 5.10.2 work in connection with contracts performed outside England or Wales.

## **5.11 Claims made in the USA or Canada**

This insurance shall not indemnify the Insured in respect of any judgment, Claim or Loss or allegation made against the Insured in any legally constituted Court in the United States of America or Canada.

## **5.12 Dishonest or fraudulent act or omission**

- 5.12.1 This Policy shall not indemnify the Insured in respect of any Claim or Loss arising out of any dishonest or fraudulent act or omission of the Insured. 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.
- 5.12.2 Notwithstanding Exclusions 5.12.1, Insurers agree to indemnify any and all Insureds not concerned in such dishonest or fraudulent act or omission subject always to the other terms and conditions of this Policy. Where the Practice or Insured is indemnified in accordance with this Exclusions 5.12.2 such Practice or Insured shall at the request of the CLC or the Insurers:
  - 5.12.2.1 take or procure to be taken at Insurers' expense all reasonable

steps to obtain reimbursement of the benefit of this insurance from any Insured concerned in such dishonest or fraudulent act or omission (or from the personal representatives of that Insured); and

5.12.2.2 procure that any money so obtained, together with any money which, but for such fraud or dishonesty is due to the Insured concerned in a dishonest or fraudulent act or omission, shall be paid to Insurers up to but not exceeding any Claim, Defence Costs or Loss paid by Insurers consequent upon the dishonest or fraudulent act or omission.

For the avoidance of doubt, where Exclusions 5.12.1 applies to any Insured or Practice so that indemnity is refused, Insurers will continue to indemnify the Insured or Practice against any Claim or Loss arising out of any other Claim whether the Claim is made or becomes payable after the refusal of an indemnity pursuant to Exclusions 5.12.1 provided it otherwise falls within the remaining terms and conditions of this Policy. In these circumstances, a Penalty Excess shall be applied in place of an Excess.

#### **5.13 Documents stored on magnetic or electronic media**

This Policy shall not indemnify the Insured against any Loss or Claim arising from the physical loss of or damage to Documents which are stored on magnetic or electronic media unless such Documents are duplicated on magnetic or electronic media with the intention that, in the event of loss or damage, the duplicate can be used as the basis for restoring the Documents to their original status.

#### **5.14 Data Corruption**

This Policy shall not indemnify the Insured in respect of any Claim or Loss arising from the transmission of any virus or any other programme or code that causes loss or damage to any party except where the damage is caused to a wholly independent third party and the transmission of the virus, other programme or code that causes the loss or damage is inadvertent. In that case the extent of the coverage afforded by this Policy is restricted only to that Loss or damage caused before the Insured became aware or with the exercise of reasonable diligence should have become aware of the transmission of the virus, whichever is the earlier.

#### **5.15 Fraudulent use of electronic signature or external email**

This Policy will not indemnify the Insured in respect of any Claim or Loss arising from the fraudulent misuse of the Insured's electronic signature or external email which occurs after the Insured discovered or with the exercise of reasonable diligence should have discovered that misuse, whichever is the earlier.

### **6. CLAIMS**

#### **6.1 Notice of Claim**

6.1.1 The Insured shall give to the Insurers written notice as soon as practicable of any Claim made against the Insured or the discovery by the Insured of loss or destruction of or damage to any Document.

6.1.2 The Insured shall give to the Insurers written notice as soon as practicable of any Circumstances, including:

6.1.2.1 the receipt of notice, whether written or oral, from any person of an intention to make a Claim against the Insured;

6.1.2.2 the discovery or reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner or director or

employee or consultant or locum of the Practice whether giving rise to a Claim or Loss under this Policy or not;

6.1.2.3 any letter of complaint expressing dissatisfaction with the Insured's work and/or indicating an intention to make a Claim against the Insured;

6.1.2.4 the discovery of any matters which may give rise to a Claim, Circumstances or claim by the Insured for indemnity under Insuring Clauses 2.3 of this Policy arising from an investigation or disciplinary proceedings by the CLC or any other regulator.

6.1.3 The Insured shall at all times and at their own expense give to Insurers or their duly appointed representatives all such information, cooperation, assistance, signed statements or depositions as may properly be required to facilitate compliance with the Civil Procedure Rules, Practice Directions and Pre-Action Protocols approved by the Head of Civil Justice.

The Insured must allow the Participants or their duly appointed representatives to develop and deploy the best possible defence of a Claim within the applicable time limits. The Insured must have adequate internal systems in place to allow ready access to material information.

In addition, the Insured shall, at their own expense, continue to keep the Insurers informed of all material developments with respect to any other matter in relation to any Claim, Loss or Circumstance.

6.1.4 The Insured shall pay the Excess or Penalty Excess on demand by Insurers or their duly appointed representatives.

## **6.2 Notice of Circumstances**

If Circumstances are notified during the Period of Insurance, then any Claim arising from those Circumstances and made after the expiration of the Period of Insurance shall be deemed for the purpose of this Policy to have been made on the date that the Insured notified Insurers of the Circumstances.

## **6.3 Claims control**

6.3.1 The Insured shall not admit liability for or settle any Claim or any costs in connection therewith without the prior written consent of the Insurers, who shall be entitled at their own expense at any time to take over and conduct in the name of the Insured the defence or settlement of any such claim.

6.3.2 Nevertheless, neither the Insured nor the Insurers shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Insurers and in default of agreement to be nominated by the Chief Executive of CLC) shall advise that proceedings could be contested with a reasonable prospect of success. The costs of instructing Queen's Counsel and his fees shall be paid by Insurers.

#### **6.4 Claim settlement**

Insurers shall not settle any Claim without the consent of the Insured. However, if the Insured shall refuse to consent to any settlement recommended by Insurers, then Insurers' liability shall not exceed the amount for which the Claim could have been settled plus the Defence Costs up to the date of such refusal.

### **7. NOTICES**

#### **7.1 Claims Notices**

All Claims Notices required to be given by the Insured under the terms of Claims 6.1 above shall be addressed to:

{Name of Insurer or Intermediary}

Any such notice given in writing by the Insured to {Name of Insurer or Intermediary} shall be deemed to be notice to Insurers.

#### **7.2 All other Notices**

Any other notices that may from time to time be required to be given by the Insured to Insurers shall be addressed to:

{Name of Insurer or Intermediary}

Any such notice given in writing to {Name of Insurer or Intermediary} shall be deemed to be notice to Insurers.

### **8. GENERAL CONDITIONS**

#### **8.1 Innocent Non-Disclosure**

Insurers will not avoid this Insurance where it is alleged that there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form provided always that the Insured shall establish to the Insurers' satisfaction that such alleged non-disclosure, misrepresentation or untrue statement was free of any fraudulent intent.

If the Insured cannot establish that the non-disclosure, misrepresentation or untrue statement was free of fraudulent intent:

- 8.1.1 the Insured shall not be entitled to indemnity in respect of any Claim, Defence Costs or Loss arising from or connected with the non-disclosure, misrepresentation or untrue statement;
- 8.1.2 if Insurers intend to deny indemnity on the basis of General Conditions 8.1.1, CLC, having become aware of Insurers' intention, may, if they consider it appropriate, make representation to Insurers. Insurers shall consider such representations promptly and in good faith and advise the CLC of their final decision after consideration of such representations;
- 8.1.3 the Insured shall be entitled to indemnity in respect of any other Claim, Defence Costs or Loss not arising from or connected with the non-disclosure, misrepresentation or untrue statement whether or not the Claim, Defence Costs or Loss arise or are notified to Insurers before or after discovery by Insurers of the non-disclosure, misrepresentation or untrue statement;
- 8.1.4 the Insurers are not entitled to avoid or repudiate this Policy on any grounds whatsoever including, without limitation, non-disclosure, misrepresentation, breach of warranty, condition or condition precedent save as set out in Exclusions

5.12 and General Conditions 8.6;

- 8.1.5 if the Insured is entitled to indemnity under General Conditions 8.1 above despite a non-disclosure, misrepresentation or untrue statement made with fraudulent intent on the part of any Principal or former Principal of the Insured Practice, the Practice or the Insured shall at the request of the CLC or the Insurers:
  - 8.1.5.1 take or procure to be taken at Insurers' expense all reasonable steps to obtain reimbursement of the benefit of this Policy from any Principal or former Principal of the Insured concerned in or making such fraudulent non-disclosure, misrepresentation or untrue statement (or from the personal representatives of that Principal); and
  - 8.1.5.2 procure that any money which but for such fraudulent non-disclosure, misrepresentation or untrue statement is due to the Principal or former Principal concerned in or making any such fraudulent non-disclosure, misrepresentation or untrue statement shall be paid to Insurers up to but not exceeding any Claim, Defence Costs or Loss paid by Insurers consequent upon such fraudulent non-disclosure, misrepresentation or untrue statement.

## **8.2 Previous Knowledge of Circumstances**

In any case of a Claim first made against the Insured or a Loss incurred by the Insured during the

Period of Insurance where:

- 8.2.1 they had previous knowledge of the Circumstances which could give rise to such Claim or Loss; and
- 8.2.2 they should have notified the same under any preceding insurance then where the indemnity or cover under this Policy is greater or wider in scope than that to which the Insured would have been entitled under such preceding insurances (whether with other insurers or not) Insurers shall only be liable to afford indemnity to such amount and extent as would have been afforded to the Insured by such preceding insurance.

### **8.3 Breach of or Non-Compliance with Conditions**

Where the Insured's breach of or non-compliance with any condition of this Insurance has resulted in prejudice to the handling or settlement of any Claim or Loss, the indemnity afforded by this Insurance in respect of such Claim or Loss (including Defence Costs) shall be reduced to such sum as in the Insurers' opinion would have been payable by them in the absence of such prejudice.

### **8.4 Rights of Third Parties**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999, and for the avoidance of doubt:

- 8.4.1 except as stated in General Conditions 8.4.3, this Insurance is not intended to confer any enforceable rights upon any third party, whether or not an interest of such third party is acknowledged by Insurers;
- 8.4.2 the parties to this Insurance shall be entitled to rescind or vary such without the consent of any third party, whether or not an interest of such third party is acknowledged by Insurers;
- 8.4.3 it is expressly provided that CLC may enforce any or all terms of this Insurance but solely in the event that the Practice insured hereunder shall have ceased trading for any reason;
- 8.4.4 if proceedings are commenced by a third party against Insurers to enforce this Policy, Insurers shall be entitled to rely on any defence or set off that would have been available to them if the proceedings had been brought by the Insured.

### **8.5 Governing Law and Jurisdiction**

This Policy 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.

### **8.6 False or Fraudulent Claims**

- 8.6.1 If the Insured shall make any claim for indemnity under this Policy knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall not indemnify any Insured in respect of any Claim or Loss giving rise to such claim for indemnity.

- 8.6.2 Notwithstanding General Conditions 8.6.1, Insurers agree to indemnify any and all Insureds not concerned in such false or fraudulent claim for indemnity, subject always to the other terms and conditions of this Policy.
- 8.6.3 If Insurers intend to rely on General Conditions 8.6.1 they must provide CLC with sufficient information to enable it to understand the reasons for Insurers' intention and to enable it to take such steps as it considers appropriate including making 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.
- 8.6.4 For the avoidance of doubt, where General Conditions 8.6.1 applies to any Insured or Practice so that indemnity is refused, Insurers will continue to indemnify the Insured or Practice against any other Claim or Loss regardless of whether the Claim or Loss is made or becomes payable after the refusal of an indemnity pursuant to General Conditions 8.6.1 provided it falls within the remaining terms and conditions of this Policy.

## **8.7 Resolution of Dispute**

If there is a dispute between Insurers and the Insured in relation to Insurers' liability to provide indemnity under this Policy, Insurers will reimburse the Insured, following resolution of that dispute, any amount paid by the Insured which, on the basis of resolution of the dispute, Insurers are liable to pay.

In the event of any such dispute or difference between the Insurers and Insured arising under this Policy, other than with regard to the contesting of legal proceedings, the dispute or difference will be referred to a mutually agreed Queen's Counsel for resolution.

If the parties cannot mutually agree on a Queen's Counsel then the Insurers and the Insured shall attempt, in good faith, to settle the dispute or difference by mediation on terms that are mutually agreed.

Should mediation be unsuccessful, the dispute or difference shall be finally settled by arbitration of a single arbitrator whose appointment is agreed by the Insurers and the Insured or, if the parties cannot agree upon a single arbitrator, 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 on the reference. The decision of the arbitration shall be final and binding on both parties and responsibility for the cost of the arbitration shall be allocated as decided by the arbitrator(s). The provisions of the Arbitration Act 1996 shall apply to such arbitration.

## **8.8 Costs Payable as Incurred**

The Insurers shall pay the Defence Costs as and when they are incurred.

## **8.9 Payment to Claimant**

Any sums payable by the Insurers to indemnify an Insured against a Claim will be paid only to the Claimant, or at the Claimant's direction, and the Insurers shall not set off against any such

amount any payment due to the Insurers from any Insured including, without limitation, any payment of premium or other sum by way of reimbursement to the Insurers.

#### **8.10 Run-off Cover**

If the Insured's Practice ceases during the Period of Insurance, or at the expiry of the Period of insurance (known as 'cessation') this Insurance provides run-off cover. The Insured's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured firm becomes a non-CLC Regulated Practice.

#### **8.11 Scope of run-off cover**

This Insurance will provide run-off cover at no additional cost in the circumstances set out in General Conditions 8.10 above and in accordance with the Insuring Clauses (but subject to the limits, exclusions and conditions of this Policy) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement it would have ended).

In respect of this six-year extension to the Period of Insurance only the Sum Insured shall be limited to £2,000,000 any one claim and in all, inclusive of Defence Costs, for the six year extension and shall not indemnify the Insured in respect of any Claim or Loss arising out of any dishonest or fraudulent act or omission of the Insured.

#### **8.12 Sanctions Limitation**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the Commonwealth of Australia, European Union, United Kingdom or United States of America.

#### **8.13 Cyber-Related Losses Affirmation**

*Subject always to the other terms, conditions, limitations and exclusions of this Policy (including, but not limited to, Exclusions 5.13, 5.14 and 5.15), any indemnity afforded and any other amounts payable by Insurers under this Policy in respect of any Claim, Loss, Defence Costs, loss, damage, liability, claim, costs, expenses, fines, penalties, mitigation costs or any other amount shall not be restricted and shall remain payable where any such indemnity or other amount payable arises from:*

*8.13.1 the accessing, processing of, use or operation of any Computer System or Computer Network;*

*8.13.2 any partial or total inability or failure or series of related partial or total inability or failures to access, process, use or operate any Computer System or Computer Network;*

*8.13.3 the accessing, processing of, transmitting, storing or using of any Data;*

*8.13.4 any partial or total inability or failure to access, process, transmit, store or use*

*any Data;*

*8.13.5 any error, omission or accident or series of related errors, omissions or accidents in respect of any Computer System, Computer Network or Data;*

*8.13.6 an unauthorised, malicious or criminal act or a series of related unauthorised, malicious or criminal acts, regardless of time and place, involving access to, processing of, transmitting, storing, use of or operation of any Computer System, Computer Network or Data;*

*8.13.7 the receipt or transmission of malware, malicious code or similar;*

*8.13.8 failure or interruption of service provided by an internet service provider, telecommunications provider or cloud provider;*

*8.13.9 any threat of or any hoax relating to General Conditions 8.13.1 to 8.13.8 above.*

*General Conditions 8.13 is not intended and shall not be construed as providing coverage not otherwise provided under this Policy.*

## **Appendix 2**

### **Participating Insurers**

### **Agreement**

### **Sample wording**

**Participating Insurers Agreement**

Private & Confidential  
Subject to Privilege

**The Council for Licensed Conveyancers (1)**

and

..... (2)

---

**Participating Insurer Agreement 2016**

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## 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**

**Reporting Officer**

**Claims**

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 rating 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 anybody 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](mailto: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 )