
Minimum Terms and Conditions 2016-17

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1. SCOPE OF COVER

1.1 The insurance must:

- 1.1.1 indemnify the Insured against Claims for Civil Liability first made against the Insured or notified as Circumstances during the Period of Insurance arising out of or in any way connected with the conduct of the Insured Firm's Intellectual Property Business;
- 1.1.2 indemnify the Insured against Defence Costs incurred with the Insurer's consent, such consent not to be unreasonably withheld or delayed. The Insurer must pay Defence Costs as and when they are incurred;
- 1.1.3 indemnify the Insured against Disciplinary Costs incurred with the Insurer's consent, such consent not to be unreasonably withheld or delayed. The Insurer must pay Disciplinary Costs as and when they are incurred;
- 1.1.4 indemnify the Insured against Mitigation Costs incurred with the Insurer's consent, such consent not to be unreasonably withheld or delayed. The Insurer must pay Mitigation Costs in excess of the Deductible, as and when they are incurred;
- 1.1.5 reimburse the Insured for all costs and expenses reasonably incurred by the Insured Firm in replacing or restoring Documents which are lost or damaged during the Period of Insurance in the course of the conduct of the Insured Firm's Intellectual Property Business, provided that such loss or damage is sustained while the Documents are either in transit or in the Insured Firm's custody or the custody of any person to whom the Insured Firm has entrusted them;
- 1.1.6 to the extent that such loss is not covered under the cover required by clause 1.1.1, reimburse the Insured Firm for Client Money refunded or a Client Advance waived by the Insured Firm where such Client Money or Client Advance has been misapplied or misappropriated by an Agent to whom it was transferred. The insurance may provide that the cover required under this clause 1.1.6 is subject to the condition that any notification to a client of the Insured Firm's intention or agreement to refund any Client Money or to waive a Client Advance is given in writing and embodies a written proviso in the following terms:

"The above payment is made (waived) on the understanding that I am (we are) not admitting that there is any legal liability upon me (us) to do so or that you have any claim on me (us)".

The insurance may provide that the maximum amount the Insured Firm may refund or waive in respect of the same act or omission or series of related acts or omissions is not to exceed a specified proportion of the Limit of Cover. The insurance may indemnify the Insured in respect of other liabilities arising from the Insured Firm's Intellectual Property Business to the extent that any such indemnity is specified in the Certificate of Insurance or as the Insurer may agree to cover in the exercise of its discretion.

2. TERRITORIAL AMBIT

Unless otherwise agreed between the Insured Firm and the Insurer, the cover provided by the Insurer must be worldwide.

3. LIMIT OF COVER

- 3.1 The Limit of Cover applicable to the Insurance must be stated in the Certificate of Insurance.
- 3.2 The Limit of Cover, exclusive of defence costs, must be not less than £250,000 in the aggregate.
- 3.3 The insurance may provide that, when considering what may be regarded as one Claim for the purposes of the limit contemplated by clause 3.2, all Claims against any one or more Insured that arise from or are attributable to
- 3.3.1 the same act or omission; or
 - 3.3.2 a series or group of related acts or omissions; or
 - 3.3.3 a series or group of similar acts or omissions; or
 - 3.3.4 the same originating cause
- will be regarded as one Claim.
- 3.4 The insurance must provide that, Defence Costs and Disciplinary Costs will be payable in addition to the Limit of Cover. If a sum in excess of the Limit of Cover has to be paid in order to dispose of any Claim, the Insurer's liability in respect of Defence Costs and Disciplinary Costs must be in the same proportion as the Limit of Cover bears to the sum paid to dispose of the Claim. In the event of the Insurer having already indemnified the Insured in respect of Defence Costs, the insurance may provide that the Insurer will be entitled to recover from the Insured such proportion of them as exceeds the proportion of the sum paid in order to dispose of the Claim as is represented by the Limit of Cover.
- 3.5 For the purposes of the cover contemplated by clauses 3.2, 3.3 and 3.4, the insurance may provide that "Claim" includes Mitigation Costs and any payment sought by the Insured pursuant to the cover contemplated by clauses 1.1.5 and 1.1.6.

4. DEDUCTIBLE AND MITIGATION COSTS

- 4.1 The insurance may provide that any Claim indemnified by the Insurer will be subject to a Deductible which will be stated in the Certificate of Insurance.
- 4.2 The insurance may provide that a "Claim" includes Mitigation Costs and any payment sought by the Insured pursuant to the cover contemplated by clauses 1.1.5 and 1.1.6.

5. PERIOD OF INSURANCE

- 5.1 The Period of Insurance must be specified in the Certificate of Insurance.
- 5.2 The insurance may provide that each Period of Insurance and all Claims which under the insurance are made or notified or deemed to be made or notified during such Period of Insurance will attach to the Policy Period in which the date of commencement of the said Period of Insurance falls.

6. EXCLUSIONS

- 6.1 The insurance may provide that the Insurer will not be liable to indemnify any Insured or make any

payment to or on behalf of any Insured in respect of:

- 6.1.1 the Insured's Deductible;
- 6.1.2 any liability incurred by the Insured in breach of clause 9;
- 6.1.3 any liability incurred by the Insured following a breach of clause 13 where the non-disclosure or the misrepresentation does not fall within the proviso to clause 13;
- 6.1.4 any liability arising out of the death of or bodily injury or psychological injury to an Employee arising out of or in the course of his employment for or on the Insured Firm's behalf;
- 6.1.5 any liability for causing or contributing to death or bodily or psychological injury or loss of or damage to property, unless arising out of professional advice or omission to perform a professional duty;
- 6.1.6 any liability arising from the provision of advice, design or specification where the Insured contracts to manufacture, construct, erect, install or supply materials or equipment;
- 6.1.7 any Claim or liability arising from an agreement by the Insured to pay any penalties or liquidated damages to the extent the liability assumed under such agreement would not otherwise have attached in the absence of such agreement;
- 6.1.8 any Claim or liability arising from any breach of any obligation owed by the Insured as employer to any Employee;
- 6.1.9 loss of or destruction of or damage to any property whatsoever, or any loss or expense whatsoever resulting or arising therefrom, or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, and/or
 - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 6.1.10 loss, destruction or damage directly occasioned by pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds;
- 6.1.11 any of the Insured's liabilities in respect of the consequence of any Circumstance:
 - (a) notified under any insurance which was in force prior to the commencement of the current Policy Period, or such earlier date as the insurer may specify;
 - (b) known to the Insured Firm at the commencement of the current Policy Period, or such earlier date as the insurer may specify, and which might reasonably be expected to produce a Claim.
- 6.1.12 any first party liability or loss or expense of any Insured;
- 6.1.13 any liability of the Insured acting in his capacity as a director (or shadow member or director within the meaning of section 251 of the Insolvency Act 1986) or officer of a company, unless arising out of professional advice or omission to perform a professional duty in the course of

the conduct of Insured Firm's Intellectual Property Business;

- 6.1.14 any liability of the Insured in relation to wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, failure to promote, harassment, discrimination or like conduct in relation to any partnership or shareholder contract, agreement or arrangement or the equivalent in the case of a Limited Liability Partnership or a company without share capital, or in relation to any employment, secondment or training contract, agreement or arrangement;
 - 6.1.15 any liability of the Insured in relation to any:
 - (a) fine or penalty assessed against the Insured, or
 - (b) award against the Insured of punitive, exemplary, or like damages under the law of the United States of America or Canada, other than in respect of defamation.
 - 6.1.16 any liability whatsoever of the Insured arising from a dishonest or fraudulent act or omission committed or condoned by the Insured except that no such dishonesty, act or omission will be imputed to (a) any other Insured or (b) a body corporate unless:
 - (a) in the case of a company it was committed or condoned by all the directors of that company; or
 - (b) in the case of Limited Liability Partnership it was committed or condoned by all members of that Limited Liability Partnership.
 - 6.1.17 any actual or alleged breach of the Insured's partnership or shareholder contracts, agreements or arrangements including any equivalent agreement or arrangement where the Insured is a Limited Liability Partnership or a company with or without share capital (including that relating to any Predecessor Firm);
 - 6.1.18 any (a) trading or personal debt of the Insured; or (b) legal liability assumed or accepted by the Insured under any contract or agreement for the supply to, or use by, the Insured of goods or services in the course the Insured Firm's Intellectual Property Business; or (c) guarantee, indemnity or undertaking by any Insured in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that Insured;
 - 6.1.19 any liability in respect of any award requiring repayment, reduction or waiver of any fees in whole or in part and any order in any court proceedings brought to enforce payment of any such award;
 - 6.1.20 any Disciplinary Proceedings arising out of any complaint by one Insured against another Insured;
 - 6.1.21 any Disciplinary Proceedings arising out of any dishonest, fraudulent, criminal or malicious act or omission of the Insured.
- 6.2 US and Canadian jurisdiction

The insurance may provide that the Insurer will not be liable in respect of any Claim, Defence Costs, Disciplinary Costs, damages, claimants' costs and expenses and other costs and expenses arising out of any act or omission and brought against the Insured in a court of the United States of America or

Canada, nor judgments or orders obtained in any other court for the enforcement of judgments obtained in a court of the United States of America or Canada, whether by way of reciprocal agreements or otherwise.

6.3 Other Agreed Exclusions

The insurance may provide that the Insurer will not indemnify the Insured in respect of any Claim, Defence Costs, Disciplinary Costs, liabilities, costs or expenses as agreed between the Principal and the Insurer, and specified in the Certificate of Insurance.

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

7. CLAIMS MADE

7.1 The insurance must provide Cover on a "claims made" basis, that is, it must be provided in respect of Claims and Circumstances first notified by the Authorised Insured to the Insurer during the Period of Insurance.

8. NOTIFICATION

8.1 The insurance may provide that the Authorised Insured must give notice in writing in such form as may be required by the Insurer as soon as practicable to the Insurer of:

8.1.1 any Claim made against an Insured during the Period of Insurance relating to risks insured by the Insurer; or

8.1.2 the receipt by an Insured during the Period of Insurance of notice from any person of any intention to make a Claim against the Insured relating to risks insured by the Insurer.

8.2 The insurance may require that the Authorised Insured gives notice in writing to the Insurer of any Circumstance of which an Insured becomes aware during the Period of Insurance.

8.3 Where notice has been given to the Insurer under the provisions contemplated by clauses 8.1 or 8.2, the insurance may require the Insured to provide such further information as the Insurer may require and to report all material developments to the Insurer.

8.4 The insurance may provide that, where the Insurer receives a notice under the provisions contemplated by clauses 8.1.2 or 8.2, any Claim subsequently made arising from such intention or Circumstance will be deemed by the Insurer to have been made at the date such notice was received.

8.5 The insurance may require that the Authorised Insured forwards to the Insurer immediately on receipt every claim, writ, summons or process relating to risks insured by the Insurer.

8.6 The insurance may provide that, in the event that the Authorised Insured commits any breach of the Authorised Insured's obligations contemplated under this clause 8, the Insurer may refuse to indemnify the Insured or to make any payment to or on behalf of the Insured or may reject any claim by the Insured arising out of the event or matter in respect of which the breach was committed, or reduce the sum payable by the Insurer in respect thereof.

9. ADMITTING AND SETTLING CLAIMS

9.1 The insurance may provide that:

9.1.1 the Insured must not admit liability to pay or settle a Claim for a sum in excess of the Deductible without the written consent of the Insurer; and/or

9.1.2 unless the Insurer otherwise agrees in writing, the Insured must not waive any rights of recourse.

10. CLAIMS SETTLEMENTS AND RECOVERIES

10.1 The insurance may provide that if, following the payment of any amount by the Insurer pursuant to the insurance, any recovery is made or payment received or benefit by way of set-off is obtained in relation to the Insured's liability:

10.1.1 such recovery, payment or benefit shall be treated as reducing the loss suffered by the Insured;

10.1.2 the amount due from the Insurer shall be reassessed as if it related to such reduced loss; and

10.1.3 the Insured shall repay to the Insurer on demand the amount (if any) by which the original payment exceeds the amount of the reassessed loss.

11. LEGAL AND OTHER ASSISTANCE

11.1 The insurance may provide that, without prejudice to any other provision of the insurance and without waiving any of the Insurer's rights, the Insurer may appoint and employ on the Insured's behalf lawyers or other persons for the purpose of dealing with any Claim or Circumstance notified to the Insurer, including investigating or advising upon any such matter, and (in conjunction with or independently of lawyers or other persons appointed or employed by any other insurers) taking or defending legal or other proceedings in connection therewith.

11.2 The insurance may provide that all lawyers and other persons appointed by the Insurer on the Insured's behalf, or appointed by the Insured with the prior consent of the Insurer, will be deemed to have been appointed and employed on the terms that they have been instructed by the Insured to give advice and to report to the Insurer in connection with the matter without prior reference to the Insured and to produce to the Insurer without prior reference to the Insured any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Insurer.

11.3 The insurance may provide that the Insurer is entitled to take over and conduct in the Insured's name the defence or settlement of any Claim or to prosecute in the Insured's name for its own benefit any claim and will have full discretion in the conduct of any proceedings and the settlement of any claim.

12. FALSE OR FRAUDULENT CLAIMS

12.1 The insurance may provide that, if a Principal or Employee claims an indemnity or any other payment from the Insurer pursuant to the insurance knowing the claim to be false or fraudulent as regards amount or in any other way whatsoever, all contracts of insurance between said Principal or Employee and the Insurer, whenever such contracts may have been made, will thereupon become void vis-à-vis said Principal or Employee and the Insurer will not be or become liable for any outstanding claims by said Principal or Employee for an indemnity or any other payment made under any such contracts

(including claims for which the Insurer has admitted liability) provided that all claims by the Insurer in respect of such contracts of insurance will remain enforceable

13. FAIR PRESENTATION

13.1 In the event of a failure to make a fair presentation by the Insured Firm at any renewal, the insurance may provide that the Insurer will: be entitled to avoid any contract of insurance between the Insured Firm and the Insurer where the failure to make a fair presentation was reckless and/or fraudulent on the part of the Insured Firm

13.2 in all other circumstances the Insurer may:

13.2.1 avoid any contract of insurance which it would not have entered into but for the failure to make a fair presentation

13.2.2 treat the contract of insurance as if it were made on the terms (excluding premium) on which Insurers would have entered into the contract of insurance but for the failure to make a fair presentation and/or

13.2.3 reduce proportionately the amount to be claimed on any claim to the extent that Insurers would have charged a higher premium but for the failure to make a fair presentation

Notwithstanding the above any Insured not associated or aware of any such non-disclosure or misrepresentation under this insurance will nevertheless be afforded cover under the insurance for liability they may incur or be responsible for.

14. DUTY TO MITIGATE

14.1 The insurance may provide that it is a condition of the insurance that the Insured will do all things reasonably within the Insured's power for the purpose of averting or minimising any expense, cost or liability in respect whereof it may be insured by the Insurer, but the Insured must not be required to contest any legal proceedings unless a Queen's Counsel (or, by mutual agreement between the Insured Firm and the Insurer a similar authority) advises that such proceedings could be contested with probability of success.

14.2 The insurance may provide that the Insured must give such assistance as the Insurer may require. In the event that the Insured commits any breach of this obligation, the insurance may provide that the Insurer will refuse to indemnify any Claim or make any other payment pursuant to the insurance arising out of the event or matter, or reduce the sum payable by the Insurer in respect thereof.

15. DOUBLE INSURANCE

15.1 The insurance may provide that if the Insured, in addition to being insured by the Insurer, is insured by any other person against any of the risks against which said Insured is insured by the Insurer or would have been so insured by such other person were it not for said Insured's insurance with the Insurer, the Insurance will exclude such risks to the extent to which said Insured is or would have been so insured by such other person.

16. RIGHTS TO SUBROGATION AGAINST EMPLOYEES

16.1 The insurance may provide that the Insurer will waive rights to subrogation against any ex-Employee of the Insured Firm who enters upon freelance technical assistance for the Insured Firm in connection

with the Insured Firm's Intellectual Property Business.

17. EFFECT OF NON-PAYMENT OF PREMIUMS

17.1 The insurance may provide that it will be a condition of the cover provided by the insurance that the Insured Firm has paid every and all Premiums when and as due.

18. SET-OFF

18.1 The insurance may provide that the Insurer may set off any amount due from the Insured Firm against any amount due to the Insured.

19. GENERAL CONDITIONS

19.1 The insurance may contain such general conditions as are agreed between the Insurer and the Insured Firm provide that such conditions do not limit or exclude any of the requirements contained in any provision of these minimum terms and conditions.

19.2 The insurance may provide that nothing in the insurance is intended to confer a directly enforceable benefit on any third party other than the Insured Firm, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20. EXCLUSION OF THE INSURANCE ACT 2015

Upon its entry into force, in addition to any exclusions or amendments to the Insurance Act 2015 ("the Act") referred to in these Minimum Terms and Conditions or any insurance, the following provisions of the Act shall be excluded from the insurance between the Insurer and the Insured Firm as follows:

20.1 Section 11 of the Act is excluded. As a result, if the Insured fails to comply with any of the Minimum Terms and Conditions, the Insurer's liability may be excluded, limited or discharged in accordance with such terms notwithstanding that the breach could not have increased the risk of the loss which actually occurred.

20.2 Section 13(A) of the Act, once in force is excluded. As a result the insurance between the Insurer and the Insured shall not be subject to any implied term that the Insurer will pay any sums due in respect of a claim within a reasonable time save that, upon Section 13(A)'s entry into force, the Insurer may not deliberately or recklessly fail to do so.

21. DEFINITIONS AND INTERPRETATION

In these Minimum Terms and Conditions and in the insurance, the following words shall have the meanings set opposite them unless the context requires otherwise:

Agent Any person or firm directly appointed by an Insured.

Authorised Insured The Individual or entity nominated by the Insured Firm who acts on behalf of each and every Insured where provided for in the insurance

Certificate of Insurance	A certificate issued by the Insurer pursuant to Rule 3.2 including all endorsements thereon.
Civil Liability	Includes (a) any award of costs by a Regulator and (b) any award of compensation by a Regulator.
Circumstance	An incident, occurrence, fact, matter, act or omission that may give rise to a Claim.
Claim	(a) A demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. (b) Disciplinary Proceedings and a demand for payment of any costs or compensation order made against the Insured in Disciplinary Proceedings.
Client Advance	Money which the Insured shall have advanced to an Agent on behalf of any client for the purpose of paying on behalf of such client (a) any renewal fee or (b) for performing any other professional service required by such client.
Client Money	Money which any client shall have entrusted to the Insured for the purpose of paying on behalf of such client (a) any renewal fee or (b) for performing any other professional service required by such client.
Consultant	Any person engaged by the Insured Firm under a contract for services.
Deductible	The amount stated in the Certificate of Insurance for which the Insured is responsible in respect of any one claim made against the Insured Firm.
Defence Costs	Any costs and expenses incurred (a) in the investigation, defence and settlement of a potential Claim, (b) in the defence or settlement of any Claim, (c) in the conduct of any proceedings for indemnity, contribution or recovery relating to a Claim or any other payment made or payable pursuant to the insurance. Defence Costs shall not include remuneration, time or any other associated benefit or overhead of the Insured, nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.
Disciplinary Costs	Any costs and expenses incurred (a) in the investigation or defence of potential Disciplinary Proceedings or (b) in the defence of Disciplinary Proceedings. Disciplinary Costs shall not include remuneration, time or any other associated benefit or overhead of the Insured, nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.
Disciplinary Proceedings	Any proceedings or charges brought or made against the Insured by a Regulator alleging a breach of the rules of professional conduct imposed upon the Insured by the Regulator the subject matter of which has given rise to a Claim which remains outstanding or is capable of giving rise to a Claim,

provided that any claim which has arisen or could arise falls or would fall to be indemnified under the insurance.

Documents	Documents (excluding bearer bonds, coupons, shares, bank notes, currency notes stamps and other negotiable instruments) whether in physical or electronic format and including computer system records, which belong to the Insured Firm or for which the Insured Firm is responsible.
Employee	Any person under a contract of service with the Insured Firm at the time of any neglect, error or omission giving rise to a Claim or Circumstance.
Insured	(a) The Insured Firm, (b) each Principal (or former Principal) of the Insured Firm, (c) each Employee of the Insured Firm and (d) any Consultant named in the Certificate of Insurance
Insured Firm	The person or firm including any Predecessor Firm named in the Certificate of Insurance as an Insured Firm.
In writing	Visibly expressed in any mode of permanently representing or reproducing words, including facsimile transmission, email and other electronic formats.
Intellectual Property Business	The provision of services relating to all or any of patents, designs, copyright, trademarks, unregistered design rights, utility models, domain names, plant varieties and the like or foreign equivalents, and actions and rights arising out of the possession of goodwill, confidential information or know-how or related thereto.
Limit of Cover	The amount as specified in the Certificate of Insurance as being the maximum aggregate sum payable by the Insurer under the insurance
Mitigation Costs	Costs and expenses of measures taken to prevent, limit or mitigate the amount of the Insured's potential liability in respect of a Claim which is covered or potential Claim which would be covered by the insurance. Mitigation Costs shall not include remuneration, time or any other associated benefit or overhead of any Insured, nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.
Period of Insurance	The period referred to in clause 5.1
Policy Period	The period of insurance in respect of which risks may attach under the insurance, as stated in the Certificate of Insurance
Predecessor	A person or Firm to which the Insured Firm succeeded to Firm the whole or part of its business as specified on the Insured Firm's Certificate of Insurance.
Premium	In relation to any contract of Insurance between the Insured Firm and the Insurer the amount agreed between the Insured Firm and the Insurer pursuant to Rule 5, together with any supplementary premium.

Principal Where the Insured Firm is or was (a) a sole practitioner, that practitioner, (b) a partnership, each partner, (c) a company, each director and (d) a Limited Liability Partnership, each member of that Limited Liability Partnership.

Regulator The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, The Controller of the Irish Patents Office, The Institute of Professional Representatives before the European Patent Office, The Office for Legal Complaints and any successor organisations.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender shall also include the feminine.

21.1 These Minimum Terms and Conditions shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.