

# Conditional Fee Agreement

## Further terms used in this Agreement

In addition to the terms described in Part One above, the following terms are used:

“Advocacy”	Shall mean appearing for the <b>Lay Client</b> at court hearings.
“Agreement, the”	Shall mean this agreement.
“Applicable Damages”	Shall mean the total of (a) general damages for pain, suffering, and loss of amenity; and (b) damages for pecuniary loss, other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.
“Available Success Fee”	Shall mean that part of the success fee sought by both Counsel and/or the Professional Client that can lawfully claimed from the Lay Client (i.e., after the application of any maximum limits).
“Concludes after the last day before trial”	Shall mean that the Claim concludes (i) after a trial has started, (ii) at any time after 00:01 hours on day the Claim was listed for trial (including <b>the</b> first trial if there is more than one), or (iii) on or after the first day of any trial window allocated to the Claim.
“Counsel”	Shall mean whichever barrister is instructed by the <b>Professional Client</b> for the purposes of providing <b>Legal Services</b> regarding the <b>Claim</b> ; where appropriate, references to ‘ <b>Counsel</b> ’ will be interpreted as meaning any barrister who falls within that category (or, where appropriate, any agent for any such barrister).
“Counterclaim”	Shall mean a claim that the <b>Opponent</b> makes against the <b>Lay Client</b> in response to the <b>Claim</b> .
“Damages”	Shall mean money (other than costs) that the <b>Lay Client</b> Wins whether by a court decision or settlement. Where appropriate, it will include a debt.
“Discounted Fees”	Shall mean a sum equivalent to the <b>Ordinary Fees</b> multiplied by the <b>Discount Fraction</b> .
“Expenses”	Shall mean payments that <b>Counsel</b> makes for the purposes of providing <b>Legal Services</b> .
“Finally”, “Final”, etc	Shall mean that the <b>Opponent</b> : (i) is not allowed to appeal against the court decision; or (ii) has not appealed in time; or (iii) has lost any appeal.
“Interim Hearing”	Shall mean a court hearing that is not final.
“Legal Services”	Shall mean any professional services regarding the Claim that a barrister may, in the course of acting as a barrister, reasonably provide their client, including <b>Advocacy</b> .
“Lose”, “Lost”, etc	Shall mean the opposite of ‘ <b>Win</b> ’; unless the contrary is implied by the context, it shall mean <b>Finally Lose</b> .
“Opponent’s charges”	Shall mean the <b>Opponent’s</b> legal fees, <b>Expenses</b> any <b>Success Fee</b> and/or any insurance premium.
“Ordinary Fees”	Shall mean the fees that <b>Counsel</b> would have charged for providing <b>Legal Services</b> if those services had been provided upon instruction by a privately-paying <b>Lay Client</b> .
“Part 36 Offer”	Shall mean an offer to settle the <b>Claim</b> made in accordance with Part 36 of the Civil Procedure Rules 1998.
“Reasonable Fees”	Shall mean those fees that are reasonably claimed in all the circumstances, the appropriate measure of reasonableness being the standard basis as described in Part 44 of the Civil Procedure Rules 1998.
“Success Fee”	Shall mean the percentage of <b>Ordinary Fees</b> that is added to those fees if the <b>Lay Client Wins</b> the <b>Claim</b> .
“Trial”	Shall mean the final contested hearing or the contested hearing of any issue to be tried separately. (NB a reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgment.)
“Win”, “Won”, etc	Shall mean that the <b>Claim</b> is <b>Finally</b> decided in the <b>Lay Client’s</b> favour in that, in a claim for money, the <b>Lay Client</b> is awarded any monies at all; an award of costs which includes <b>Counsel’s</b> fees will be regarded as being a <b>Win</b> . Where the <b>Claim</b> is not a money claim, “ <b>Win</b> ” will be defined by reference to the remedy or result sought. For the avoidance of doubt, a compromise that achieves benefit for the client will amount to a <b>Win</b> .

## Para One: The effect of this Agreement

A: This contract sets out the basis upon which **Counsel** will be paid for providing **Legal Services** to the **Lay Client**. It is an agreement that is designed to avoid disputes arising after it has been made, and as such, the parties have agreed in advance what will happen if the **Claim** does not result in recovery of sufficient monies to allow full payment of both **Counsel’s** fees and the **Professional Client’s** own fees and disbursements. The parties hereby acknowledge and agree both that there will be no need to enter into retrospective negotiations about the sums payable, and that this **Agreement** sets out rights that the parties intend to be enforced and expect to be enforced against them.

B: The **Agreement** is a multipartite agreement whereby **Chambers** acts as **Counsel’s** agent and the **Professional Client** acts as the **Lay Client’s** agent. The **Lay Client** is not a party to this **Agreement**, but they are put on notice of certain obligations with which they are expected to comply. The **Professional Client** is a party to the **Agreement** and accepts full responsibility for paying Counsel’s fees. **Unless** the contrary is stated in writing, every barrister who is instructed after the **Agreement Date** will, upon accepting instructions, become a party to this **Agreement** as if they had put their name to it in writing at the time that it was first made. **Chambers** has a coordinating role, and to that extent (but only to that extent), is also a party to this **Agreement**.

Para One: The ambit of the conditional fee agreement created by this Agreement

A: Unless it is agreed otherwise, the conditional fee agreement created by this Agreement will cover the following:

- The **Claim**;
- Any pre-issue applications;
- Any work ancillary to the **Claim**, such as watching briefs in tribunals other than the civil courts;
- Any appeal brought by the **Opponent**;
- Any appeal the **Lay Client** makes against an interim order;
- ADR (including mediation) relating to the **Claim**; and
- Assisting with the detailed assessment of the costs of the **Claim**, including (in so far as they relate to **Counsel's fees**) negotiations relating thereto, but not including representing the **Lay Client** on any assessment.

B: Unless it is agreed otherwise (such agreement being capable of being inferred by conduct), the conditional fee agreement created by this Agreement does not cover:

- Any proceedings taken by or against the **Lay Client** to enforce a judgment, order or agreement;
- Any counterclaim made against the **Lay Client** (but see below);
- Any Part 20 claim the **Lay Client** may make or that may be made against the **Lay Client** (but see below); and
- Any appeal the **Lay Client** make against the final judgment order.

C: For the avoidance of doubt, where **Counsel** carries out work which is not covered by the conditional fee agreement created by this **Agreement**, the costs associated with that work (including **Expenses**) will be payable on the terms set out under the heading 'Fees for work not incurred under the conditional fee agreement created by this Agreement'.

D: One of the two following provisions will apply according to what is set out in the **Schedule**; if both options have been left blank, then the first will apply be default:

- **Retrospective provision:** The conditional fee agreement created by this **Agreement** covers all work carried out since the date on which **Counsel** (including **Primary Counsel**) was first instructed in the **Claim** or otherwise carried out any work in the **Claim**. Unless **Counsel** have agreed otherwise (and subject to what is set out below), this **Agreement** replaces any previously-made conditional fee agreement or other retainer that the parties may have had concerning **Counsel's** remuneration, and it does so as if this **Agreement** had applied from the time **Counsel** was first instructed. This, however, assumes that the retainer created by this **Agreement** is enforceable; if this is not the case, and if counsel so elects, the original agreement(s) or retainer(s) shall survive and continue to have effect as if this **Agreement** had never been made.
- **No retrospective provision:** The scope of the conditional fee agreement created by this **Agreement** is limited to work done from the **Agreement Date**. **Counsel's** fees for any and all work carried out before that date are payable in accordance with the provisions under the heading 'Fees for work not incurred under the conditional fee agreement created by this Agreement' (see below).

#### Para Two: Paying for Legal Services provided by Counsel

The nature of the conditional fee agreement created by this Agreement is as set out in the Schedule. Only one of the following provisions will apply:

##### A: Type One Agreement

i: If the **Claim** is **Lost**, only **Expenses** will be payable; unless they have already become due by reason of previous **Interim Hearing**, there will be no liability for **Counsel's Ordinary Fees** and there will be no **Success Fee**. If the **Claim** is **Won**, then the provisions set out generally in this Agreement will apply.

ii: **Counsel's Ordinary Fees** are unaffected by Part 36 Offers and will be payable regardless of whether a **Part 36 offer** has or has not had a bearing on the recovery of costs. If a **Part 36 offer** has

been made and not accepted and if the court deprives the **Lay Client** of costs as a result of the that offer having been made and not accepted, the **Success Fee** will cease to be payable for the period during which the court has deprived the **Lay Client** of costs. If, during the relevant period, the court deprives the **Lay Client** of only part of the **Lay Client's** costs, then the **Success Fee** will be payable, but it will be reduced in a way that is proportionate to the reduction imposed by the court. The provisions of this paragraph will not apply where **Counsel** advised that the offer be accepted or where counsel was not given opportunity to advise on whether it should be accepted.

##### B: Type Two Agreement

i: If the **Claim** is **Lost**, only **Expenses** will be payable; unless those fees have become due by reason of an award of costs made at a previous Interim Hearing, there will be no liability for **Counsel's Ordinary Fees** and there will be no liability for a **Success Fee**. If the **Claim** is **Won**, then the provisions set out generally in this **Agreement** will apply.

ii: If a **Part 36 offer** has been made and not accepted and if the court deprives the **Lay Client** of costs as a result of the that offer having been made and not accepted, the **Success Fee** and **Ordinary Fees** will cease to be payable for the period during which the court has deprived the **Lay Client** of costs. If, during the relevant period, the court deprives the **Lay Client** of only part of the **Lay Client's** costs, then the **Ordinary Fees** and **Success Fee** will be payable, but they will be reduced in a way that is proportionate to the reduction imposed by the court. The provisions of this paragraph will not apply where **Counsel** advised that the offer be accepted or where **Counsel** was not given opportunity to advise on whether it should be accepted.

##### C: Type Three Agreement

i: Unless this Agreement ends as a result of the **Lay Client** and/or the **Professional Client** having failed to discharge their obligations under "The Lay Client's Responsibilities" and/or "the Professional Client's Responsibilities", **Counsel** agrees not to pursue the **Professional Client** for any of their fees beyond those which are recovered from the **Opponent**; the **Professional Client** will remain liable for all of **Counsel's** fees in the event of a **Win**, but **Counsel** agrees that they may enforce their liability in this regard only by pursuing the **Opponent** for those fees or by causing the **Professional Client** (or other person) to pursue the **Opponent** for those fees. In this regard, The **Professional Client** irrevocably agrees to pursue the **Opponent** for those fees in the name of the **Lay Client** and the **Lay Client** irrevocably agrees to permit the **Professional Client** to do so; all reasonable efforts must be made in this regard.

ii: **Expenses** are not included within the provisions mentioned above; they are payable regardless of whether they are not recovered from the **Opponent**.

##### D: Type Four Agreement

i: Subject to the provisions set out below, if the **Lay Client Wins** the **Claim**, the **Professional Client** will be liable for the **Ordinary Fees**, the **Expenses**, and the **Success Fee**; the amounts that the **Professional Client** actually pays, however, are restricted (see the Lite Provision below). If the **Lay Client Loses** the **Claim**, then only **Expenses** are payable.

ii: Unless this Agreement ends as a result of the **Lay Client** and/or the **Professional Client** having failed to discharge their obligations under "The Lay Client's Responsibilities" and/or "the Professional Client's Responsibilities", **Counsel** agrees not to pursue the **Professional Client** for any of their **Ordinary Fees** beyond those which are recovered from the **Opponent**; the **Professional Client** will remain liable for all of **Counsel's Ordinary Fees** in the event of a **Win**, but **Counsel** agrees that they may enforce their liability in this regard only by pursuing the **Opponent** for those fees or by

causing the **Professional Client** (or other person) to pursue the **Opponent** for those fees. In this regard, The **Professional Client** irrevocably agrees to pursue the **Opponent** for those fees in the name of the **Lay Client** and the **Lay Client** irrevocably agrees to permit the **Professional Client** to do so; all reasonable efforts must be made in this regard.

iii: **Expenses** are not included within the provisions mentioned above; they are payable regardless of whether they are not recovered from the **Opponent**.

iv: The amount recovered from the **Opponent** will be known as the **Amount Recovered**; any **Expenses** or **Ordinary Fees** recovered will be known as **Recovered Expenses** and **Recovered Ordinary Fees** respectively.

v: The monies referred to in this subparagraph are inclusive of VAT:

- Unless there is reason to believe otherwise, it will be assumed that all of the **Expenses** have been recovered from the **Opponent**; thus, if **Expenses** and the **Amount Recovered** were £220 and £9,620 respectively, the **Recovered Ordinary Fees** would (in the absence of reason to believe otherwise) be £9,400.
- The **Success Fee** will be the product of the **Percentage Increase** and the **Recovered Ordinary Fees**. If, for example, the **Percentage Increase** is 80 percent, on the figures set out above, the **Success Fee** would be = £7,520.
- The total payable will be the **Recovered Ordinary Fees** plus the **Success Fee** plus the **Expenses**. In the example above, the total payable would be £9,400 + £7,520 + £220, a total of £17,140.

Where any of the figures set out in any of the subparagraphs above are incapable of precise calculation, **Counsel** must make a reasonable estimate. The parties agree that **Counsel**' estimate will be binding unless it is plainly unreasonable or wrong. If there is disagreement in this regard, then either the court can adjudicate or the matter can be referred to a costs lawyer of not less than 10 years' experience in costs practice for a written opinion (which will be binding on both parties).

vi: For the avoidance of doubt, if this **Agreement** ends as a result of **Lay Client** and/or the **Professional Client** having failed to discharge their obligations under "The Lay Client's Responsibilities" and/or "the Professional Client's Responsibilities", the **Professional Client** will be liable to pay **Ordinary Fees** and **Expenses** in full. If the **Lay Client** then goes on to **Win** the **Claim**, the **Professional Client** will also pay a **Success Fee**.

#### **E: Type Five Agreement**

i: If the **Claim** is **Lost**, **Counsel** will be paid **Discounted Fees** and **Expenses** (in full). If, however, this **Agreement** ends as a result of the **Lay Client** and/or the **Professional Client** having failed to discharge their obligations under "The Lay Client's Responsibilities" and/or "the Professional Client's Responsibilities", **Ordinary Fees** will be payable immediately together with a **Success Fee** if the **Lay Client** then goes on to **Win** the **Claim**. If the **Claim** is **Won**, then the provisions set out generally in this **Agreement** will apply.

ii: If a Part 36 offer has been made and not accepted, and if the court deprives the **Lay Client** of costs as a result of the that offer having been made and not accepted, the **Success Fee** and **Ordinary Fees** will cease to be payable for the period during which the court has deprived the **Lay Client** of costs, but **Discounted Fees** will be payable instead. If, during the relevant period, the

court deprives the **Lay Client** of only part of the **Lay Client's** costs, then the **Ordinary Fees** and **Success Fee** will be payable, but they will be reduced in a way that is proportionate to the reduction imposed by the court, subject at all times to those fees being no lower than **Discounted Fees**. The provisions of this paragraph will not apply where **Counsel** advised that the offer be accepted or where **Counsel** was not given opportunity to advise on whether it should be accepted.

#### **F: All Types of Agreement: General Provisions**

i: Subject to the relevant provisions set out above, if the **Lay Client Wins** the **Claim**, the **Professional Client** will be liable for **Counsel's Ordinary Fees**, **Expenses**, and **Success Fee**. Subject to the provisions in the **Schedule**, that liability will exist regardless of whether the **Professional Client** has been put in funds.

ii: If any monies become payable during the lifetime of the **Claim**, those monies may (and upon request by the **Professional Client**, will) be invoiced at any time after they become payable. Fee notes for those monies will be payable upon receipt regardless of the outcome of the **Claim**.

iii: If this **Agreement** ends as a result of the **Lay Client** and/or the **Professional Client** having failed to discharge the obligations under "The Lay Client's Responsibilities" and/or "the Professional Client's Responsibilities", the **Professional Client** will be liable to pay **Ordinary Fees** and **Expenses** in full; if the **Lay Client** then goes on to **Win** the **Claim**, the **Professional Client** will also pay a **Success Fee**.

iv: If on the way to **Winning** or **Losing** the **Claim** the **Lay Client Wins** an **Interim Hearing**, then (subject to the provisions set out above and to the provisions in the **Qualifications** and **Conditions**) **Counsel** is entitled to immediate payment of **Ordinary Fees** and **Expenses** relating to that hearing. If the **Lay Client** subsequently **Wins** overall, a **Success Fee** will, in addition, be payable.

v: Where there is disagreement as to whether the **Claim** has been **Won**, the matter shall be referred to an independent barrister of not less than 10 years call who will decide the issue on the basis of written submissions; that barrister's decision will be binding on the parties and will be final.

#### **Para Three: The Success Fee**

A: The **Success Fee** is calculated in accordance with the provisions in the **Schedule**. It is calculated by multiplying the **Percentage Increase** by the **Ordinary Fees**.

B: If the claim is a **Personal Injuries** claim (within the meaning of that phrase as used in the Conditional Fee Agreements Regulations 2013) the **Success Fee** is subject to the following maximum limits:

- In proceedings at first instance (i.e., the **Claim** itself before any appeal), 25 percent of the **Applicable Damages**; and
- In all other proceedings (i.e., any appeal), 100 percent of the **Applicable Damages**.

C: Unless it is expressly agreed in writing, no part of the **Success Fee** relates to the postponement of payment of the fees and expenses.

D: The **Success Fee** cannot be more than 100 percent of the **Ordinary Fees**; if for whatever reason it is claimed a rate which exceeds 100 percent, it shall be deemed to be specified as being 100 percent as if that figure had been written into this **Agreement** ab initio.

#### **Para Four: Ordinary Fees**

A: **Ordinary Fees** are the equivalent of the fees that **Counsel** would have charged had this matter not been funded by way of a

conditional fee agreement. The details are set out in the Schedule. Unless otherwise agreed, a refresher will be payable for any court hearing which is a second or subsequent day of a hearing, but if there is a gap of more than two weeks between the days of such a hearing, **Counsel** will be entitled to negotiate a higher fee. If the court hearing lasts less than 2 hours 30 minutes, two thirds of the refresher is payable (unless some other fee has been agreed).

B: If any part of the **Schedule** has been left blank, counsel will be entitled to payment of a reasonable fee to be assessed in a way that is analogous to that set out in the Civil Procedure Rules 1998 for assessment of fees between solicitor and client.

C: The rates of pay set out in the **Schedule** will apply from the **Agreement Date** (or, where appropriate, from the date of instruction) until the next review date. If, however, those rates are not reviewed for a period of 24 months, they will be deemed to have increased by a total of 6 percent (i.e., 3 percent per year).

#### **Para Five: Fees for work not incurred under the conditional fee agreement created by this Agreement**

A: Where work is (or has been) carried out beyond the ambit of the conditional fee agreement created by this **Agreement**, then the following provisions will apply:

- If, at the time the work was carried out, there was an agreement or understanding as to how counsel should be paid, and if the sub-paragraph immediately below does not apply, then counsel will be paid according to the terms of that agreement or understanding;
- If there is a dispute as to either the existence of or terms of such a putative agreement or understanding, then provided that that dispute is based on genuine grounds that are not fanciful, counsel will be paid a fair and unconditional reasonable fee for the work done; in assessing those fees, regard must be had to **Counsel's** usual terms of business; and
- Where the sub-paragraph immediately above applies, **Counsel's** fees are, in default of agreement, to be assessed as a contractual right to payment.

B: For the avoidance of doubt, references elsewhere in this **Agreement** to payment, fees, **Ordinary Fees**, etc are references to monies payable under the conditional fee agreement created by this **Agreement** rather than the monies payable under the sub-paragraphs above.

#### **Para Six: Reporting requirements and handling of costs**

A: Unless **Counsel** has been paid in full for all work that has been carried out (regardless of whether a fee note has been rendered for that work), the **Professional Client** will under the following obligations:

B: To use all reasonable skill and care and to take all reasonable steps to recover **Counsel's** fees from the **Lay Client** and/or the **Opponent** (whichever is appropriate), and to do so as quickly as reasonably possible;

C: To inform **Chambers** of the following events:

- The fact of and date of the definition of "**Win**" being met;
- The fact, date and terms of any costs order made in favour of the **Lay Client**;
- The fact of and date upon which any interim award of costs is made and/or received;
- The fact of and date upon which any payment on account of costs (whether by way of order or otherwise) is made;
- The fact and date upon which any Bill of Costs is served on behalf of the Lay Client (or if this has not been done following 3 months after the date on which the entitlement to costs arose, an explanation as to why this is the case);

- Where relevant to **Counsel** in anything other than a trivial way, the contents of any Points of Dispute;
- The fact and date upon which a request is made for a detailed assessment, and if no request for an interim costs certificate is made, the reasons why;
- The date upon which any detailed assessment hearing is due to take place and the outcome of that assessment; and
- The fact and date upon which any final or default costs order is made and/or any costs received.

D: These obligations are in addition to those in the Costs Practice Direction.

E: Any monies which are paid to **Professional Client** which either contain a contribution towards **Counsel's** fees or which are paid for the purpose of discharging any costs debt arising out of **Counsel's** fees (be that the sole purpose of payment or otherwise), will, to the extent that such monies can be said to relate to **Counsel's** fees be held on express trust for **Counsel** from the moment that they are received.

F: If the payment of or amount of **Counsel's** fees or Expenses are in any way dependant on the monies recovered from the Opponent, then the **Professional Client** will inform **Counsel** of those negotiations and will ensure that **Counsel** is given reasonable opportunity (so far as practicable) to comment thereupon. Where any compromise is made in circumstances in which **Counsel** had not been given reasonable opportunity to comment and/or or in circumstances in which **Counsel** had not given approval of the proposed compromise (such approval not to be unreasonably withheld), then **Counsel** will be entitled to and will be paid those monies that would have been payable had their reasonable fees and Expenses been recovered in full from the **Opponent**. (It is recorded that it is the **Professional Client's** responsibility to ensure that they are able to exercise sufficient control of the **Lay Client** to avoid the **Lay Client** unreasonably accepting or making offers against legal advice.)

#### **Para Seven: Interest**

A: Where **Counsel's** fees ought, under the terms of this **Agreement**, to have been paid, then interest will begin to run from the 31<sup>st</sup> day after payment, such interest being calculated at a rate of 8 percent per annum, or such other rate as may be set out in correspondence. Where interest is recovered from the **Opponent** which covers the period of non-payment (including the first 31 days) and where this is at a rate that exceeds 8 percent, then the provisions immediately below will, with the necessary changes, apply to the period in question.

B: Where interest on costs is recovered from the **Opponent**, then (to the extent that **Counsel's** fees were unpaid at the material time) **Counsel** will be entitled to a proportionate share of that interest, that proportion being based on the sums reasonable claimed during the period in question. This provision will apply regardless of whether **Counsel** is otherwise entitled to interest. To the extent that the law requires such a provision for the purposes of satisfying the indemnity principle, the **Professional Client** agrees that such monies are payable by him on behalf of the **Lay Client** as if those monies were part of Counsel's fees generally.

C: Notwithstanding the provisions below, where the Professional Client holds any monies on trust for **Counsel** and where, without good reason, those monies are not paid to **Counsel** within 14 days of receipt by the **Professional Client**, **Counsel** will be entitled to punitive interest at a rate of 1.25 percent per month, compounded at monthly rests.

D: For the avoidance of doubt, if this **Agreement** is a **Type Three Agreement**, interest between the **Professional Client** and **Counsel** will begin to run only from the date of receipt of the monies in question from the **Opponent**.

E: Where **Counsel** has agreed to adjust their fees to take account of the monies recovered from the **Opponent**, or where they have agreed to postpone negotiations about payment until after such monies are received, **Counsel** will be entitled to interest only after having given written notice of their intention to do so. Unless exceptional circumstances exist (such as the sums in question being unusually large), such notice may not be given any sooner than 6 months after the relevant entitlement to costs arose. Where such notice is given, then a reasonable rate of interest will be payable, which, in default of agreement to the contrary, will be 1.5 percent above LIBOR.

**Para Eight: Other points**

A: This Agreement incorporates the **Qualifications and Conditions** (see below); where this **Agreement** makes provisions which are different from or incompatible with the provisions in the **Qualifications and Conditions**, this **Agreement** shall prevail.

B: This **Agreement** is governed by the law of England and Wales. Any disputes must be litigated there.

C: The description of the **Claim** as set out above is for recognition purposes only and does not in any way limit the ambit of this Agreement; the ambit of the retainer shall be taken to include all matters that the parties understood to be the subject of the **Claim**. That ambit may change from time-to-time as the **Claim** progresses. In particular, if an opponent is incorrectly described or

if more opponents are joined after this **Agreement** was first made, the ambit of this **Agreement** will not be in any way limited by the fact that the description of the **Claim** as set out above may not be wholly accurate and complete.

D: In the event that any term or condition or provision of this **Agreement** is held to be a violation of any applicable law or statute or regulation, the same shall be deemed to be deleted from this **Agreement** and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term and condition or provision had not originally been contained in this **Agreement**.

E: To be effective (and unless the court orders otherwise), any variation of or supplement to this **Agreement** must be made in writing.

F: It is recorded that prior to signing this **Agreement**, the Professional **Client** explained the following to the **Lay Client**:

- The **Lay Client's** obligations as set out under "the Lay Client's responsibilities" (below);
- The circumstances in which the **Counsel** would seek payment;
- The fact that the **Success Fee** must be paid by the Lay Client (usually out of damages);
- The **Lay Client's** right to an assessment of any such payment; and
- The general effect of the **Agreement**.

## Qualifications and Conditions

1. **Value added tax (VAT):** Counsel adds VAT to both their fees and (where appropriate) Expenses. Where the law permits, Counsel has the right to elect the rate of VAT which will apply; subject to the law saying otherwise, Counsel's election will be absolute and not capable of challenge.
1. **Currency:** Save for Expenses charged in other currencies, Counsel's fees will be rendered and are payable in pounds sterling. If Counsel receives payment in any currency other than pounds sterling they will convert such currency at the exchange rate published by the Royal Bank of Scotland plc on the date payment is received; any shortfall on conversion and the costs of conversion to pounds sterling are payable by the Professional Client in addition to the amount of the fees or Expenses.
2. **The Lay Client's responsibilities:** The Lay Client is expected to:
  - give instructions (and to continue to give instructions) that allow Counsel and the Professional Client to do their work properly;
  - not ask Counsel to work in an improper or unreasonable way;
  - not deliberately mislead Counsel or the Professional Client;
  - not unreasonably reject Counsel's advice;
  - cooperate with Counsel and Professional Client; and
  - attend any expert examination or court hearing which they have been asked to attend.
3. **The Professional Client's responsibilities:** The Professional Client must:
  - give instructions (and to continue to give instructions) that allow Counsel to do their work properly;
  - not ask Counsel to work in an improper or unreasonable way;
  - not deliberately mislead Counsel;
  - cooperate with Counsel;
  - not unreasonably reject Counsel's advice; and
  - where it is accepted, take all reasonable steps to ensure that Counsel's advice is put into effect; and
  - Not do anything that might impair Counsel's ability to be paid.
4. **What happens when this Agreement ends before the Claim ends?**
  - (a) *Paying Counsel if the Lay Client and/or the Professional Client ends this Agreement:* The Lay Client and/or Professional Client can end the Agreement at any time and for any reason. If this is done, the Professional Client must pay Counsel's Ordinary Fees and Expenses immediately upon termination and in full; if the Lay Client goes on to Win the Claim, the Professional Client must also pay a Success Fee.
  - (b) *Paying Counsel if Counsel ends this Agreement (failure to meet obligations):* Counsel can end this Agreement if either the Lay Client or the Professional Client fail to abide by their responsibilities as set out above. If this happens, the Professional Client must pay Ordinary Fees and Expenses immediately upon termination and in full; if the Lay Client goes on to Win the Claim, the Professional Client must also pay a Success Fee.
  - (ii) *Paying Counsel if Counsel ends this Agreement (poor prospects of success):* Counsel can end this Agreement (at any stage) if they believe the Lay Client is unlikely to Win and/or if they believe the risks have materially changed since they made the risk assessment and set the Success Fee. If Counsel ends the Agreement in these circumstances, the Claim will be regarded as having been Lost and the Professional Client will pay Expenses (and, where appropriate, Discounted Fees) accordingly; if the Lay Client goes on to Win the Claim, the Professional Client will also pay the Ordinary Fees (or, if Discounted Fees have been paid, the balance of Ordinary Fees), but Counsel will not be entitled to a Success Fee.
  - (iv) *Paying Counsel if Counsel ends this Agreement (rejection of advice):* Counsel can end this Agreement if the Lay Client rejects their advice about making a settlement with the Opponent (including advice about any Part 36 Offer or any other significant offer). If this happens, the Professional Client must pay Ordinary Fees and Expenses immediately upon termination and in full; if the Lay Client goes on to Win the Claim, the Professional Client must also pay a Success Fee.

## 5. Assignment

The benefits and obligations under this Agreement may be assigned at will.

## 6. Limitations

This Agreement governs the terms on which Counsel is to be paid; it deals with no other issues whatsoever. Unless the contrary is expressly indicated in writing, this Agreement will not give rise to any contractual right whatsoever that, if breached, would lead to the payment of damages beyond those would have been payable had Counsel been instructed on a private basis.

Subject to the preceding clause, Counsel is not liable:

- for any loss or damage, however suffered, by any person other than the Lay Client;
- for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions; or
- for any indirect or consequential loss however suffered.

Nothing in Clause shall operate so as to exclude liability where such exclusion is prohibited by law.

The liability of the Head of Chambers is limited solely to that which is appropriate as representative for Chambers as a whole; beyond that, the Head of Chambers accepts no personal responsibility whatsoever under the terms of the Agreement.

Without prejudice to the above, should any liability attach solely as a result of breach of these terms or of any other contractual provision of the **Agreement** in circumstances whereby **Counsel** would not otherwise have been liable (whether at common law (including in negligence), in equity or otherwise), that liability shall be limited to the sum stated in the **Agreement**. If no such sum is stated, the limit of that liability will be the highest limit of cover for such liabilities provided to **Counsel** by the **Bar Mutual Indemnity Fund**. That limit is usually very much lower than the overall level of cover provided to **Counsel**.

#### **7. Insolvency and successor practices**

In the event of the **Professional Client** becoming insolvent, the legal rights accrued under this **Agreement** may be assigned to a third party, but only if **Counsel** consents in writing, such consent not to be unreasonably withheld. Unless **Counsel** agrees otherwise, any such assignment will be subject to an express trust in respect of which **Counsel** is the beneficiary.

Unless the contrary is agreed in writing or implied by conduct, then the insolvency of either **Counsel** or the **Lay Client** or the **Professional Client** will not have the effect of terminating this **Agreement**. If, for whatever reason, a new agreement or retainer is made with the successor practice, administrator, assignee, etc. or with anyone else, then (in the absence of reason to believe otherwise) this **Agreement** will coexist with that **Agreement** such that in so far as the accrued rights are concerned, monies will be payable according to the outcome of the Claim.

#### **8. Loss of Capacity**

If the **Professional Client** loses capacity during the currency of this **Agreement**, any person who subsequently gives instructions on their behalf will, in the absence of agreement to the contrary, be deemed to be acting as their agent and/or as their litigation friend, and shall be deemed to be doing so on the terms as set out in this **Agreement**.