

## **Government Litigation Funding and Indemnity Agreement**

dated 18 November 2024 between  
the Secretary of State for the Home  
Department and Clare  
Spottiswoode CBE

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**This Agreement is dated the** 18th **day of** November **2024**

**Between:**

- (1) The Secretary of State for the Home Department as part of the Crown whose principal address is 2 Marsham Street, London, SW1P ZDF, United Kingdom (the **Funder**); and
- (2) Clare Spottiswoode CBE of a private residential address, London (the **Class Representative**),

each a **Party** and together the **Parties**

**Whereas:**

- (A) The Class Representative considers that the Class Members (defined below) have or may have a cause or causes of legal action against the Defendants (defined below) arising out of anti-competitive practices undertaken by the Defendants in relation to the pricing of Airwave Services (defined below).
- (B) The Class Representative is commencing Proceedings (defined below) (in the form of a collective proceedings on behalf of the Class Members) pursuant to section 47B of the Competition Act 1998 against the Defendants before the CAT (defined below).
- (C) The Class Representative requires funding of her legal costs and disbursements in connection with the Proceedings.
- (D) In connection with and ancillary to the principal purpose of this Agreement regarding the funding of the Class Representative's Costs, the Class Representative is also seeking funding from the Funder for any Adverse Costs (defined below) which become payable during the course of the Proceedings.
- (E) The Funder has agreed to fund the Class Representative's Costs (defined below) and any Adverse Costs (defined below) in connection with the Proceedings on the terms and subject to the conditions set out in this Agreement.
- (F) In considering whether to enter into this Agreement, the Class Representative has taken independent legal advice as to the available options for funding for the Proceedings, including the advantages and disadvantages of each. That advice has also included advice on the terms of this Agreement and associated documents, including Conditional Fee Agreements.
- (G) The Funder in its role under this Agreement is acting for and on behalf of the Crown. The Funder also acknowledges its role as a Class Member and separately as the provider of Funding (defined below) under this Agreement, such relationship shall be managed in the Funding Agreement Memorandum of Understanding.
- (H) Having carefully considered the advice of her Solicitors and independent legal advice, the Class Representative is of the view that the terms of funding set out in this Agreement are the best options available in the Interests of Class Members as a whole and that the terms set out in this Agreement are at least as desirable as terms that the Class Representative would be able to obtain elsewhere.

**It is agreed** as follows:

**1 Definitions and Interpretation**

- 1.1 The following definitions and rules of interpretation shall apply to the interpretation of this Agreement.

## Definitions

|   |  |
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| <b>Accounting Officer</b>                 | means the Funder's appointed accounting officer from time to time, usually its permanent secretary;  |
| <b>Adherence Agreement</b>                | means the agreement between the Funder, Class Representative, Counsel Team and Solicitors, a copy of which is appended at Schedule 3 (Adherence Agreement).  |
| <b>Adverse Class Representative Event</b> | means the occurrence of one or more of the following events: <ul style="list-style-type: none"> <li>(a) the CAT makes a final order refusing to authorise (or revoking authorisation, as applicable) the Class Representative as the Class representative for the purpose of the Claim; or</li> <li>(b) the Class Representative delivers to the Funder a written Notice indicating a desire to cease acting as the class representative for the Proceedings or is otherwise incapacitated or unable to fulfil the role as determined by the CAT;</li> </ul> |
| <b>Adverse Costs</b>                      | means the sum of costs so ordered or agreed to be paid by the Class Representative or Funder or any of their respective Affiliates pursuant to any Adverse Costs Order or Settlement or other agreement between the parties to the Proceedings, including indemnity costs if so ordered;   |
| <b>Adverse Costs Indemnity Limit</b>      | means the greater of £ 20,000,000 (twenty million pounds) or any further amount agreed between the Funder and the Class Representative from time to time in accordance with the terms of this Agreement;   |
| <b>Adverse Costs Order</b>                | means an order made by the CAT or other court, tribunal, arbitrator or an equivalent officer or body, which results in a sum of money becoming due from the Class Representative or Funder or any of their respective Affiliates to any other party in or related to the Proceedings in respect of legal costs, including a security for costs order requiring the payment of money or provision of a bond against which the Defendants may enforce a future costs order;  |
| <b>Advisory Panel</b>                     | means the advisory panel to the Class Representative in relation to the Proceedings;   |
| <b>Advisory Panel TOR</b>                 | means the terms of reference governing the relationship between the Class Representative and the members of the Advisory Panel specified in Schedule 4 (Advisory Panel TOR);   |
| <b>Affiliate</b>                          | means in relation to a specified person, any person who controls, or is controlled by, or who is under common control  |

with, or who is under common influence or has a close connection with, or is otherwise a person associated or connected with, that specified person or an Affiliate of that person;

**Aggregate Funding Commitment**

means £17,500,000 or a higher amount as agreed from time to time between the Funder and the Class Representative for the Class Representative's Costs in accordance with Clause 5.9;

**Agreement**

means this agreement including the schedules appended hereto and as the same may be varied or amended in accordance with its terms;

**Airwave Network**

a secure private Land Mobile Radio network for organisations involved in public safety in Great Britain, operated by Airwave Solutions Limited;

**Airwave Services**

critical Land Mobile Radio network services which are essential for public safety in Great Britain (and ancillary services) as provided by the Airwave Solutions Limited in relation to the Airwave Network;

**Airwave Solutions Limited**

means Airwave Solutions Limited being a company registered in England and Wales with company number 03985643 and registered office at Nova South, 160 Victoria Street, London, SW1E 5LB;

**Appeal**

means an appeal or further appeal of any interim or final judgment or award in the Proceedings or of any interlocutory matter during the course of Proceedings (whether commenced by the Representative or the Defendants) and including any cross-appeal of the Class Representative and the Class Representative's response to any appeal of the Defendants. For the avoidance of doubt, Appeal includes any application for judicial review of any interim or final judgment or of any interlocutory matter during the course of Proceedings;

**Assessor**

means any Independent Specialist Counsel or other expert agreed by the Funder and the Class Representative to be appointed as the Assessor.

in the event that the parties are not able to agree on the identity of an Assessor within three Business Days, either Party may apply to the then Chair of the Bar Council of England & Wales to nominate an Assessor, and Funder and the Class Representative shall appoint the nominated Assessor;

**Audit Agents**

means:

- (a) the Funder's internal and external auditors;
- (b) the Funder's statutory or regulatory auditors;

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|                         | <p>(c) the accountable officer, Comptroller and Auditor General, their staff and/or approved Class Representatives and the National Audit Office;</p> <p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Funder to carry out an audit or similar review functions; and</p> <p>(f) successors and assigns of any of the above;</p>   |
| <b>Bribery Act</b>      | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;  |
| <b>Business Day</b>     | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;  |
| <b>Business Hours</b>   | means between the hours of 9am and 5pm on a Business Day;   |
| <b>CAT</b>              | means the Competition Appeal Tribunal;  |
| <b>CAT Rules</b>        | means the Competition Appeal Tribunal Rules 2015 (as amended or superseded from time to time);  |
| <b>Certification</b>    | means the issuance of a collective proceedings order in accordance with rule 80 (the Collective Proceedings Order) of the CAT Rules;  |
| <b>Challenge Notice</b> | means written Notice setting out the grounds of a challenge to the Funding claimed by the Class Representative pursuant to this Agreement;  |
| <b>Claim</b>            | means each and every claim that the Class Representative and/or any Class Member and/or any of their respective Affiliates may seek to assert against the Defendants and/or their Affiliates or any other person in the Proceedings, arising out of or related to collective proceedings under section 47B of the Competition Act 1998 and arising in relation to anticompetitive practices undertaken by the Defendants in breach of the Chapter II prohibition set out in section 18 of the Competition Act 1998 in relation to pricing for Airwave Services and includes any and all statutory, legal or equitable cause or causes of action, in any jurisdiction, that are or may be vested in the Class Representative or any Class Member and/or their respective Affiliates against the Defendants and/or their Affiliates or any other person, arising out of or related to the same; |
| <b>Class</b>            | means all persons represented as members of the Proposed Class in the Proceedings as certified by the CAT, excluding any persons who subsequently opt out of the Proceedings in   |

accordance with Rule 82, and **Class Member** shall mean any one of them;

**Class Representative Offer**

means an offer by the Class Representative to the Defendants for Settlement of the Claim;

**Class Representative's Costs**

means the reasonable costs and disbursements incurred by the Class Representative in connection with the conduct of the Proceedings including:

- (a) costs of the Solicitors including the Uplift;
- (b) costs of the Counsel Team including the Uplift;
- (c) costs of the experts;
- (d) fees and expenses of economists, accountants, fact and expert witnesses and other professionals; the costs of any litigation support services reasonably required for the efficient pursuit of the Proceedings;
- (e) filing and all other fees of any applicable Court;
- (f) disbursements and other expenses;
- (g) any VAT on the above costs and expenses not lawfully recoverable and recovered by the Class Representative;
- (h) the Class Representative's Remuneration; and
- (i) any other amounts agreed between the Class Representative and the Funder to be paid by the Funder and/or its Affiliates in connection with this Agreement;

**Class Representative's Remuneration**

means the Class Representative's remuneration in respect of the services to be provided by the Class Representative composed of the Class Representative's fees and disbursements as specified in Schedule 2 (Class Representative's Remuneration) to this Agreement;

**Collective Settlement Order**

means an order of the CAT approving a proposed settlement in accordance with CAT Rules 94 to 97 inclusive;

**Commencement Date**

means the date of this Agreement;

**Conditional Fee Agreement**

means the conditional fee agreements made between (i) the Class Representative and the Solicitors and (ii) the Counsel Team and Solicitors in respect of these Proceedings as the same may be varied from time to time in accordance with their terms and subject to the approval of the Funder;

**Confidential Information**

means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party's personnel) whether before or after the date of this Agreement, including but not limited to:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;
- (b) any Personal Data; and
- (c) any information derived from any of the above.

Confidential Information **shall not** include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 20 (Duty of Confidentiality) of this Agreement);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure;

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| <b>Cost Forecast</b>    | means the document attached at Schedule 1 (Cost Forecast) which specifies the Class Representative's reasonable estimate of the Class Representative's Costs anticipated to be incurred by the Class Representative pursuant to the terms of this Agreement as the same may be amended in accordance with the provisions of Clause 5 (Legal Cost Forecast);              |
| <b>Costs Recoveries</b> | means any amount of money deriving from a costs order made by the CAT (including any interim costs award) or a sum in lieu of such an order made by the CAT or any sum in lieu of costs as part of a Settlement;   |
| <b>Counsel Team</b>     | means the barristers acting for the Class Representative in respect of the Proceedings from time to time, being at the date of this Agreement Anneli Howard KC, Rhodri Thompson KC and Professor Suzanne Rab and any junior counsel appointed from time to time;   |
| <b>Court</b>            | means any forum in any jurisdiction in which the Proceedings are issued or heard (and for the avoidance of doubt includes the CAT);  |
| <b>Crown Body</b>       | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |



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| <b>Damages</b>                       | means any Proceeds deriving from an aggregate award of damages to the Class Members made by the CAT or a sum in lieu of such an award as part of a Settlement (but for the avoidance of doubt excludes any Costs Recoveries);   |
| <b>Data Protection Legislation</b>   | means (i) the UK GDPR; (ii) the DPA 2018 to the extent that it relates to the processing of Personal Data and privacy; (iii) (to the extent that it applies) the EU GDPR; (iv) all applicable Law relating to the processing of Personal Data and privacy;  |
| <b>Deduction</b>                     | means any kind of tax or taxes, levy, charge, impost, rate, fee, deduction, duty, excise, or withholding or instalment amount, whether direct or indirect, by whatever method imposed, collected or recovered, together with any interest, fine, fee, penalty or statutory charge payable, imposed or claimed in respect of any such amount;  |
| <b>Defendants</b>                    | means any of Motorola Solutions, Inc., Airwave Solutions Limited and Motorola Solutions UK Limited and their Affiliates and any party subsequently joined to the Claim as co-defendant, additional party or Part 20 defendant under the English Civil Procedure Rules or any equivalent party under the applicable Procedural Rules and “ <b>Defendants</b> ” shall be construed accordingly; |
| <b>Defendants’ Offer</b>             | means an offer from any of the Defendants to the Class Representative and/or the Class to settle the Claim in whole or in part;   |
| <b>Distribution Agent</b>            | means the distribution agent, if any, appointed by the Class Representative, or alternatively, the CAT to distribute any award made by the CAT to the Class Members;  |
| <b>DPA 2018</b>                      | means the Data Protection Act 2018;   |
| <b>Effective Date</b>                | shall have the meaning given in Clause 2 (Commencement);  |
| <b>Emergency Services Network</b>    | means the intended replacement of the Airwave Network which will be a critical communication system enabling fast, safe and secure voice, video and data across the existing commercial 4G network;   |
| <b>English Civil Procedure Rules</b> | means the rules in force from time to time governing the conduct of litigation, arbitration or resolution of disputes in the courts or applicable tribunal or arbitral proceedings of England and Wales;  |
| <b>EU GDPR</b>                       | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;  |
| <b>Excluded Costs</b>                | shall have the meaning given in Clause 7 (Excluded Costs and Liabilities);  |

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| <b>Financial Year</b>                                | means from 1 April to 31 March;   |
| <b>FOIA</b>  | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;  |
| <b>Funding Agreement Memorandum of Understanding</b> | means the arrangement which sets out the ethical walls to separate the Funder's dual roles as funder and also as a Class Member in relation to the Proceedings and which shall operate in support of this Agreement, a copy of which is attached at Schedule 4 to this Agreement (Funding Agreement Memorandum of Understanding) as the same may be varied or amended by the mutual agreement of the parties to that document;  |
| <b>Funding and Funding Amount</b>                    | <p>means the amount of funding provided by the Funder (and which is outstanding to the Funder from time to time) under this Agreement comprising the:</p> <ul style="list-style-type: none"> <li>a) the Class Representative's Costs;</li> <li>b) Adverse Costs paid by the Funder and/or its Affiliates;</li> <li>c) any other amounts stated in this Agreement to form part of or by added to the Funding;</li> <li>d) out of pocket costs and expenses paid or incurred by the Funder and/or its Affiliates in connection with this Agreement; and</li> <li>e) any other amounts agreed to be paid by the Funder and/or its Affiliates in connection with this Agreement;</li> </ul> |
| <b>Funding Period</b>                                | means the period for which the Funding is awarded starting on the Effective Date and ending on the date of termination determined in accordance with Clause 17 ( Termination of Funding and Consequences);  |
| <b>HMRC</b>  | means HM Revenue and Customs;   |
| <b>Independent Specialist Counsel</b>                | <p>means</p> <ul style="list-style-type: none"> <li>a) in respect of Clause 4.5, an independent King's Counsel or retired judge who specialises in cost disputes; and</li> <li>b) in respect of all other provisions of this Agreement, an independent barrister who has been appointed as one of His Majesty's counsel, with experience in matters similar to the Claim and who has not otherwise acted for any of the Parties or Defendants in connection with the Proceedings;</li> </ul>  |
| <b>Information Acts</b>                              | means the Data Protection Legislation and FOIA as amended from time to time;  |

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| <b>Interests of Class Members</b> | means the interests of the Class Members as a whole in the Proceedings being conducted in a manner which is in the interest of the class as a whole, in particular but not exclusively by (i) the maximising of Proceeds for the class as a whole; and (ii) the minimising of the risk of Adverse Costs notwithstanding the indemnity provided by the Funder;   |
| <b>Interim Costs Payments</b>     | means any amount received or recovered by or on behalf of the Class Representative and/or the Class Members in payment of all or part of any legal costs paid, incurred or otherwise provided in connection with the Proceedings and repaid to the Funder;  |
| <b>Land Mobile Radio</b>          | means a public or private two-way wireless communications network commonly used by public safety organisations such as police, firefighters and emergency responders for critical communications;   |
| <b>Law</b>                        | means any applicable law, statute, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020, byelaw, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;  |
| <b>Letter of Claim</b>            | means the letter sent prior to commencing the Proceedings;  |
| <b>Material Adverse Decline</b>   | <p>means a material adverse decline, [REDACTED]<br/> [REDACTED]<br/> [REDACTED]<br/> [REDACTED]<br/> [REDACTED]<br/> [REDACTED]<br/> [REDACTED] in respect of one or more of the following aspects of the Claim:</p> <ul style="list-style-type: none"> <li>(a) the prospects of obtaining Certification;</li> <li>(b) the prospects of Success for the Class as a whole in the Proceedings;</li> <li>(c) the prospects of successfully enforcing judgment against any Defendant; and/or</li> <li>(d) the ability of any Defendant to meet its obligations with respect to any judgment,</li> </ul> |
| <b>Monitoring Report</b>          | means the report referred to in Clause 21 (Monitoring and Reporting);   |
| <b>Notice</b>                     | means a notice given in accordance with Clause 30 (Notices and Communications);   |

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| <b>Offer of Settlement</b> | means an offer to enter into a Settlement whether made by the Class Representative or any other party(ies) to the Proceedings;  |
| <b>Open Book Data</b>      | means complete and accurate financial and non-financial information which is sufficient to enable the Funder to verify Class Representative's Costs paid or payable and the Cost Forecast to be paid during the remainder of the Funding Period including details of all assumptions relating to the determination of the Class Representative's Costs including timesheets and relevant charge-out rates for all supplier staff, all disbursements and costs and any other associated costs together with any additional information or data as the Funder may reasonably require;   |
| <b>Personal Data</b>       | has the meaning given to the expression in the UK GDPR or the EU GDPR as the context requires;  |
| <b>Procedural Rules</b>    | means the English Civil Procedure Rules and the CAT Rules or the rules in force from time to time governing the conduct of litigation, arbitration or resolution of disputes (as applicable) in the relevant Court;   |
| <b>Proceedings</b>         | <p>means each and every dispute and such other litigation or arbitral or alternative dispute resolution proceedings issued or arising out of or in connection with proceedings of the Claim before the CAT including any pre-action correspondence, settlement negotiations or mediation and enforcement proceedings to enforce payment of any judgment, order, award or Settlement agreement.</p> <p>For the avoidance of doubt, "Proceedings" does not include an Appeal unless specifically agreed by the Funder pursuant to Clause 5.12 to 5.15 inclusive;</p>  |
| <b>Proceeds</b>            | <p>means:</p> <p>(i) any amount of money awarded to, recovered or received by, or agreed to be paid to, the Class Representative and/or any Class Member in the Proceedings or any related proceedings (including those referenced in Clause 5.7);</p> <p>(ii) interest and any sums recovered in the Proceedings or any related proceedings (including those referenced in Clause 5.7) by way of legal costs and ex gratia payments in respect thereof or recovery of any amounts payable by the Class Representative to Funder,</p> <p>(iii) sums realised and received by the Class Representative and/or any Class Member in respect of any non-cash consideration that forms part or the whole of any Success in the Proceedings or any related proceedings (including those referenced in Clause 5.7), the value of any counterclaim against any Class Member abandoned or withdrawn in whole or in part as part of any Success in the Proceedings,</p> <p>(iv) VAT refunds, interim awards of costs, but excluding any Interim Costs Payments.</p> |

Proceeds shall be the gross amount prior to any set-off or counterclaim exercised by the Defendants or prior to any Deduction by any Tax Funder;

**Prohibited Act**

means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Funder or any Crown Body any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement;
  - or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Agreement;
- (b) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement; or

defrauding or attempting to defraud or conspiring to defraud the Funder or the Crown;

**Recovery**

means the recovery of any Proceeds and Costs Recoveries, and 'Recovered' shall be construed accordingly;

**Relevant Jurisdiction**

means:

- (a) the location of the Claim;
- (b) any jurisdiction in which any Proceeds is or may be situated; and

the jurisdiction where the Solicitors are based or carrying on business for the purposes of this Agreement;

**Request for Payment**

shall have the meaning given in Clause 4.3;

**Retainer**

means any retainer or engagement agreement in place between the Class Representative and the Solicitors;

**Settlement**

means an agreement between the Class Representative and any Defendant, and/or their respective Affiliates, in settlement of the whole or part of the Claim, including any waiver,

compromise of the Proceedings against a Defendant, or a decision by the Class Representative to abandon, withdraw or discontinue the Proceedings;

**Settlement Assessment**

has the meaning given to it in Clause 16.3;

**Settlement Proceeds**

means any Proceeds deriving from a Settlement, inclusive of Cost Recoveries and Damages;

**Solicitors**

means the solicitors of record acting for the Class Representative in respect of the Proceedings from time to time, being at the date of this Agreement Ashurst LLP (Euan Burrows and Anna Morfey);

**Success**

means the Claim (and/or with reference to any Appeal as applicable) is resolved in the Class Representative's favour, including:

- (a) where the Court orders the Defendants (or any of them or any third party) to pay any Damages, or grants any such other relief at first instance; or
- (b) where the Defendants (or any of them or any third party) agree to pay any Settlement Proceeds; or
- (c) where the Defendants (or any of them or any third party) agree to terms in favour of the Class Representative and/or Class Members, by way of Settlement or any other agreement in respect of the Claim

Settlement includes the acceptance by the Class Representative prior to Certification of a Defendants' Offer or by the Defendants of a Class Representative Offer and as approved by the CAT as a Collective Settlement Order or a Collective Settlement Approval Order being made by the CAT (as applicable). This is irrespective of whether a costs order or agreement is made in favour of the Class Representative.

**Successful** shall be construed accordingly;

**Tax Authority**

means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the UK or elsewhere;

**Termination Date**

means the date on which this Agreement terminates in accordance with Clause 17 (Termination of Funding and Consequences) of this Agreement;

**Transaction Documents**

means this Agreement, the Retainer and the Adherence Agreement;

**Trust**

means the trust created under Clause 15 (Trust);

|                       |   |
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| <b>Trust Property</b> | means any property that is subject to the Trust;  |
| <b>UK GDPR</b>        | Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; |
| <b>Uplift</b>         | means the “Deferred Conditional Payment” as defined in and payable to the Solicitors and the Counsel Team subject to and in accordance with the terms of their respective Conditional Fee Agreements;   |
| <b>VAT</b>            | means UK value added tax and/or any equivalent EU or non-EU turnover, gross sales, franchise tax having the same (or broadly the same) economic effect as UK value added tax in the Relevant Jurisdiction.  |

## Interpretation

- 1.2 The headings to this Agreement shall not affect its interpretation.
- 1.3 All references to a statutory provision shall be construed as including references to:
  - 1.3.1 any statutory modification, consolidation or re-enactment;
  - 1.3.2 all statutory instruments and orders made pursuant to it; and
  - 1.3.3 any statutory provisions of which it is a modification, consolidation or re-enactment.
- 1.4 Except where the context otherwise requires, words denoting the singular include plural and vice versa; words denoting gender include all genders; words denoting persons includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality).
- 1.5 References to a Class Member’s “share” or “proportionate share” shall be calculated as the applicable Class Member’s Claim estimate expressed as a proportion of the aggregate Claim estimate for the entire Class.
- 1.6 Section 32 of the Trustee Act 1925 does not apply to any trust that is created under this Agreement (including the Trust).
- 1.7 All references in this Agreement to “Funding”, “funding” or “fund the costs of pursuing the Claim” howsoever described, shall be construed to be references to the Funder’s investment in the Claim and associated right to share in the Claim Proceeds, together with the other rights set out in this Agreement, and it shall not be construed as a loan from the Funder to the Class Representative or giving rise to a lender/ borrower arrangement, arrangement for the provision of credit or for the procurement of goods or services.
- 1.8 All references in this Agreement to the “Funder” shall be to the Funder in its capacity only as the funder of Proceedings and not in relation to its role as a Class Member and the two roles

shall be kept distinct and separate as further contemplated in the Funding Agreement Memorandum of Understanding.

- 1.9 In this Agreement the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";
- 1.10 All references in this Agreement to "representations" will be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under the Agreement; and
- 1.11 All references in this Agreement to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses, schedules and appendices of this Agreement and references in any schedule or appendix to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the schedule or appendix in which these references appear.

## **2 Commencement**

- 2.1 This Agreement shall not come into force and effect unless and until the later date on which the following conditions have been satisfied:

- 2.1.1 the Transaction Documents have been executed by all parties to those documents; and

- 2.1.2 the Funder has approved the Letter of Claim being sent,  
(the **Effective Date**).

- 2.2 Notwithstanding this Agreement coming into force in accordance with Clause 2.1, the Class Representative confirms that she will only file the Claim once she has received the Funder's further written confirmation that the Funder will provide the Funding. Where the Funder refuses to grant that authority (which it is free to do within its absolute authority) then it may also give notice to the Class Representative of termination of this Agreement.

## **3 The Funder to Provide Litigation Funding**

- 3.1 In consideration for the Class Representative's agreement to prepare, commence and pursue the Proceedings, the Funder agrees with effect on and from the Effective Date to pay the Class Representative's Costs up to the amount of the Aggregate Funding Commitment and as required, pay the Class Representative any Adverse Costs up the amount of the Adverse Costs Indemnity Limit, each in accordance with the terms of this Agreement.
- 3.2 The Class Representative agrees that any Recovery shall be applied in accordance with the provisions of Clause 14 (Application of Proceeds) until all amounts Recovered have been fully applied.

## **4 Class Representative's Costs**

- 4.1 The Funder agrees to fund the Class Representative's Costs where:
  - 4.1.1 the costs align with the Cost Forecast;
  - 4.1.2 the costs do not exceed the Aggregate Funding Commitment;
  - 4.1.3 the Class Representative has provided invoices and reasonable documentary evidence in respect of all Class Representative's Costs;



- 4.1.4 the Class Representative's Costs are reasonably and properly incurred by the Class Representative in accordance with the terms of this Agreement and the Transaction Documents; and
- 4.1.5 the Class Representative's Costs do not include any Excluded Costs.
- 4.2 The Funder shall pay any approved invoices within 30 days of the Funder receiving a valid Request for Payment.
- 4.3 The Class Representative shall instruct the Solicitors and any other suppliers of services provided for in the Cost Forecast to invoice her monthly in respect of services rendered in the previous month and to address invoices relating to the work to the Class Representative (who remains primarily liable for the same) but marked payable by the Funder (addressed to the Class Representative and issued C/O the Home Office) and to deliver those invoices to the Funder for payment. In the case of the Class Representative's Remuneration, these shall be paid monthly or on such other terms as are agreed between the Class Representative and the Funder. The Class Representative shall submit such invoices to the Funder, on a monthly basis along with supporting narratives and evidence of services rendered and invoices received from all providers of services for which costs are being claimed (a **Request for Payment**).
- 4.4 If in the reasonably held opinion of the Funder, any costs invoiced by the Class Representative are not eligible for payment in accordance with the terms of this Agreement then the Funder shall serve a Challenge Notice on the Class Representative, with copies to the relevant supplier and to the Solicitors, within twenty (20) Business Days of delivery of the relevant invoice.
- 4.5 In the event of a Challenge Notice being served, the Class Representative agrees to raise any queries identified in the Challenge Notice with the relevant supplier with the aim of reaching an agreement as to the disputed costs. Where an agreement, satisfactory to the Funder, cannot be reached within twenty (20) Business Days of service of the Challenge Notice the decision as to whether such costs are reasonable costs recoverable pursuant to the terms of this Agreement shall be taken by an Independent Specialist Counsel within twenty (20) Business Days of his or her appointment. The Independent Specialist Counsel is to be agreed between the Parties or, in lieu of such agreement, to be nominated by the Chairman of the Bar Council. Such Independent Specialist Counsel shall be deemed to be jointly instructed by both Parties. The Funder and the Class Representative agree to be bound by such decision and the Class Representative shall use all reasonable endeavours to procure the agreement of the relevant supplier to be bound by such decision. Unless the Funder's challenge is unsuccessful, the fees of the Costs Expert shall be treated as part of the Class Representative's Costs and within the Cost Forecast; if the challenge is unsuccessful, the Costs Expert's fees shall be paid by the Funder and shall not form part of the Aggregate Funding Commitment.
- 4.6 Pending resolution of a Challenge Notice, the Funder shall pay all the Class Representative's Costs in the meantime that are not subject to the challenge.
- 4.7 Within ten (10) Business Days of receiving the Independent Specialist Counsel's decision, the Funder will pay any sum owing to either the relevant supplier and/or the Independent Specialist Counsel if directed by the Independent Specialist Counsel.
- 5 Cost Forecast**
- 5.1 In connection with the Class Representative's Costs, the Class Representative has prepared the Cost Forecast (attached at Schedule 1 (Cost Forecast)) which is accepted by the Funder.
- 5.2 The Cost Forecast may be amended from time to time with such amendments to be agreed in writing between the Funder and the Class Representative.
- 5.3 As soon as the Class Representative becomes aware of any anticipated changes to the Cost Forecast which would result in the total forecast cost for any one month or for any one phase of the litigation or the litigation as a whole (as set out in the Cost Forecast) being exceeded, it

shall prepare an updated and amended Cost Forecast for circulation to the Solicitors and Funder together with all supporting evidence and information to allow the Funder to assess the validity and necessity of the proposed change.

- 5.4 The Funder shall be entitled to request such further information and evidence as it may require to consider the proposed change to the Cost Forecast.
- 5.5 The Parties agree that any proposed revision to the Cost Forecast shall be approved at the absolute discretion of the Funder and any dispute in relation to a proposed change to the Cost Forecast shall not be capable of referral or determination under dispute resolution procedure in Clause 19 (Disputes).
- 5.6 In revising the Cost Forecast the Parties shall have regard to whether changes are necessary for the purpose of conducting the Proceedings as contemplated by this Agreement and the Transaction Documents and whether such changes are less than the Aggregate Funding Commitment.

#### **Related proceedings**

- 5.7 In the event that proceedings involving the Class Members and relating to the subject matter of the Claim (including any potential claim by the Class Representative for negligence against the Counsel Team or Solicitors, other than the Proceedings, are begun, the Class Representative may request the Funder to fund the costs of any or all of such proceedings and the Funder shall have the right to fund any or all such proceedings. If the Funder consents to this request (and for the avoidance of doubt, the Funder may consent to providing funding in respect of the costs of any or all of such proceedings (or none of them)), the costs of the proceedings shall be added to the Aggregate Funding Commitment and be incorporated into the Cost Forecast in a form agreed in accordance with the process in Clauses 5.2 to 5.6.
- 5.8 In the event that the Funder agrees to provide funding for the Class Representative's Costs in accordance with Clauses 5.7 above, this Agreement shall be deemed to apply such that the additional proceedings shall form part of the Proceedings.

#### **Increases to the Aggregate Funding Commitment**

- 5.9 In the event that the Class Representative requires funding for the Class Representative's Costs in excess of the Aggregate Funding Commitment, the Class Representative will submit a request outlining the additional funding that it considers is required, a revised Cost Forecast and an explanation from the Solicitors and/or Counsel Team. The Class Representative shall also provide any further supporting information (including further advice or opinions from the Solicitors and/or Counsel Team) that the Funder may reasonably require in relation to the request.
- 5.10 The Funder will consider reasonable requests by the Class Representative to increase the Aggregate Funding Commitment. If the Funder declines to increase the Aggregate Funding Commitment, the Class Representative may source such funding from a third party provided that, prior to entering into any third party funding arrangement the Class Representative shall share the proposed terms of that arrangement with the Funder and seek its approval to them, which the Funder may withhold if it reasonably considers that the terms of that third party funding materially compromise the Funder's right to recover the Funding Amount that it has under this Agreement.
- 5.11 For the avoidance of doubt, excepting a decision by the Funder to approve the proposed terms of a third party funding arrangement which may be referred to resolution pursuant to Clause 19 (Disputes), the other matters under Clauses 5.9 to 5.10 shall not be capable of resolution pursuant to Clause 19 (Disputes) and the Funder shall have absolute discretion in taking such decisions under these Clauses.

#### **Appeals**

- 5.12 In the event the Class Representative proposes to bring, or defend an Appeal, the Class Representative will as soon as possible provide the Funder with written advice from the

Solicitors and/or the Counsel Team (as applicable) on the merits of the Appeal, including a revised Legal Forecast specifying the estimated costs of the Appeal, likely timelines for the Appeal and a written explanation of the effect and implications of the Appeal on the Proceedings. The Class Representative shall also provide any further supporting information (including further advice or opinions from the Solicitors and/or Counsel Team) that the Funder may reasonably require in relation to the proposed bringing, or defence of an Appeal.

- 5.13 The Funder will consider reasonable requests by the Class Representative to fund the bringing, or defending of an Appeal. If the Funder consents to this request, then the costs of dealing with the Appeal shall form part of the Aggregate Funding Commitment and be incorporated into the Cost Forecast in a form agreed in accordance with the process in Clause 5.2.
- 5.14 In the event that the Funder declines to provide such funding for an Appeal, the Class Representative may source such funding from a third party provided that, prior to entering into any third party funding arrangement the Class Representative shall share the proposed terms of that arrangement with the Funder and seek its approval to them, which the Funder may withhold if it reasonably considers that the terms of that third party funding materially compromise the Funder's right to recover the Funding Amount that it has under this Agreement or that the Funder considers, acting reasonably, that the third party is not a fit and proper person and/or where association with the third party could pose a reputational risk to the Funder.
- 5.15 For the avoidance of doubt, excepting a decision by the Funder to approve the proposed terms of a third party funding arrangement which may be referred to resolution pursuant to Clause 19 (Disputes), the matters under Clause 5.12 to 5.13 shall not be capable of resolution pursuant to Clause 19 (Disputes) and the Funder shall have absolute discretion in taking such decisions under these Clauses.

## **6 Payment Terms and Interest**

- 6.1 The Class Representative shall procure that the Solicitors and/or any other relevant supplier promptly notify and repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. Any sum, which falls due under this Clause 6.1, shall fall due within 30 days.
- 6.2 In the event that any sum payable under this Agreement is not paid by its due date interest will be payable on such sum at the Bank of England's base rate for the time being in force, compounded annually, from the date on which payment was due to the date payment is received, or for such other period as may be specified in this Agreement.

## **7 Excluded Costs and Liabilities**

- 7.1 Unless otherwise agreed by the Funder, the Funder will not pay or be liable under this Agreement for any of the following costs, sums or liabilities incurred by the Class Representative:
  - 7.1.1 costs and/or other sums incurred as a result of the Class Representative's unreasonable failure (on any one or more occasions) to co-operate with or to follow the advice of Solicitors or Counsel Team;
  - 7.1.2 costs and/or other sums incurred as a result of any unreasonable act or omission of the Class Representative;
  - 7.1.3 any Adverse Costs in excess of the Adverse Costs Indemnity Limit;
  - 7.1.4 any liability for payment of the Class Representative's liability for fines or penalties. For the avoidance of doubt, Adverse Costs that comprise indemnity

costs shall not be considered as fines or penalties for the purposes of this clause 7.1.4;

- 7.1.5 costs and/or other sums incurred as a result of any unreasonable failure by the Class Representative to comply with the CAT Rules (if applicable) or an order of the Court during Proceedings;
- 7.1.6 any element of VAT where otherwise recoverable by the Class Representative; or
- 7.1.7 any costs incurred in excess of the Aggregate Funding Commitment or as otherwise provided for in this Agreement.

## **8 The Funder's Obligations**

8.1 The Funder agrees that it will:

- 8.1.1 act in good faith in its role as Funder under this Agreement in all dealings with the Class Representative, the Solicitors and the Counsel Team during the course of the Proceedings;
- 8.1.2 take all reasonable steps to assist the Class Representative to achieve the certification of the Proceedings pursuant to Rules 78 and 79 of the CAT Rules; and
- 8.1.3 take all reasonable steps to assist the Class Representative in demonstrating to the Defendants and the CAT that the Class Representative is able to pay any Adverse Costs Order.

## **9 Funder Indemnity in Respect of Adverse Costs**

- 9.1 Subject to the terms and conditions of this Agreement, the Funder agrees, in connection with the Proceedings, to pay any Adverse Costs if they become payable up to the amount of the Adverse Cost Indemnity Limit.
- 9.2 The Funder will not be obliged to pay any Adverse Costs caused by or attributable to any fraud or dishonesty on the part of the Class Representative and/or any deliberate or reckless action(s) or omission(s) on the part of the Class Representative to the detriment of the chances of Success, whether arising prior to or during the conduct of the Proceedings.
- 9.3 Notwithstanding its obligations under Clause 11.2(h) (minimising likelihood and quantum of any Adverse Costs Order), the Class Representative shall monitor its risk of exposure in respect of Adverse Costs throughout the Proceedings and shall regularly report to the Funder in relation to it in accordance with Clause 21.2 (Monitoring and Reporting). In the event that the Class Representative considers that the Adverse Costs Indemnity Limit needs to be increased, it will submit a request outlining the increased limit that it considers is required. In support of the reports or request for an increased Adverse Costs Indemnity Limit, the Class Representative shall provide such supporting evidence and information (including advice and opinions of the Counsel Team and/or Solicitors) as the Funder reasonably requires.
- 9.4 The Funder will consider reasonable requests to increase the Adverse Costs Indemnity Limit and, without prejudice to any other right it has under this Agreement, may approve or decline such request within its absolute discretion.

## **10 Security for Costs**

- 10.1 In the event of an order of the CAT that the Class Representative shall provide security for the costs of a party to the Proceedings, subject to the amount of the security being within the Adverse Costs Indemnity Limit, the Funder will discharge that order to the satisfaction of the Court and in a form to be agreed between the Class Representative and the Funder. The

amount of such security shall be deducted from the coverage provided under the Adverse Costs Indemnity Limit.

## **11 Class Representative's Obligations**

11.1 Subject to the provisions of this Agreement, the Class Representative shall have control of the Proceedings and nothing in this Agreement will permit the Funder to override any advice given by the Solicitors or Counsel Team or require the Class Representative to conduct the Proceedings in a particular way.

11.2 The Class Representative shall:

- (a) act fairly and adequately in the Interests of the Class Members in the conduct and prosecution of the Proceedings (including in relation to any abandonment, withdrawal or discontinuance of the Proceedings and any mediation or negotiations to resolve the Proceedings), taking into account the advice of the Solicitors and the Counsel Team;
- (b) conduct the Proceedings in a way that recognises the Class Members' interest in ensuring the ongoing effective performance of the Airwave Services, the maintenance and reliability of the Airwave Network and its associated smooth, effective and timely transition to the new Emergency Services Network;
- (c) cooperate fully throughout the Proceedings and provide full, frank and honest instructions and assistance to the Solicitors as they may require in pursuing the Proceedings;
- (d) take all reasonable steps to support the Solicitors and Counsel Team in engaging constructively with the Defendants to resolve the Claim including through mediation;
- (e) carefully consider advice given by the Solicitors and/or the Counsel Team and not unreasonably disregard such advice, including whether it would be appropriate to make, or consider any offer for Settlement;
- (f) instruct the Solicitors to seek recovery of the Class Representative's costs in connection with the Proceedings, including (if advised by the Solicitors) the amounts payable to the Funder pursuant to this Agreement;
- (g) immediately inform the Solicitors and the Funder of any information or change in circumstance which is material to the Proceedings, the Agreement, prospects of Success of the Proceedings, the prospects of Recovery and/or distribution;
- (h) take all steps to incur only reasonable and proportionate costs and minimise and control the quantum of the legal costs and ensure that the Proceedings are conducted so as to minimise the quantum of any Adverse Costs and the likelihood of the Class Representative, or the Funder, being liable to pay Adverse Costs;
- (i) ensure that in the purchase of any goods, services and/or works in support of the Proceedings that she shall act in compliance with the Public Contracts Regulations 2015 as if she was a contracting authority for the purposes of those regulations;
- (j) adopt such policies and procedures as are required in order to ensure that value for money has been obtained in the procurement of goods and or services funded pursuant to this Agreement;
- (k) unless prohibited by law or any order of the CAT, provide the Funder with any information reasonably requested; and

- (l) not agree any material changes to the Advisory Panel TOR save with the Funder's prior written consent, which shall not be unreasonably withheld.
- 11.3 The Class Representative shall regularly and effectively engage with the Advisory Panel and consider its advice. Without prejudice to the generality of the previous sentence, it shall engage with the Advisory Panel and consider its advice in relation to prospective significant decisions that it takes in relation to the Proceedings and to ensure that it fully understands the Interests of Class Members, including those referenced in Clause 11.2(b) above, as those may develop during the course of the Proceedings.
- 11.4 In the event that a decision is required by the Class Representative to abandon, withdraw or discontinue the Proceedings (including any part of the Proceedings), the Class Representative agrees to:
  - 11.4.1 obtain a written opinion from the Solicitors and/or the Counsel Team in respect of whether the Proceedings (or part of the Proceedings) should be abandoned, withdrawn or discontinued;
  - 11.4.2 provide a copy of the opinion to the Funder at least ten (10) Business Days before making a decision to abandon, withdraw or discontinue the Proceedings (or part of the Proceedings); and
  - 11.4.3 not abandon, withdraw or discontinue the Proceedings (or part of the Proceedings) against the legal advice of the Solicitors and/or the Counsel Team.
- 11.5 In the event that the Class Representative reasonably believes that there has been any negligence on the part of the Solicitors or Counsel Team (or any one of them) the Class Representative shall inform the Funder of such potential claim including all relevant supporting information as soon as reasonably practicable and the Funder shall provide confirmation of whether it expects that the Class Representative shall pursue such claim and the provisions of Clause 5.7 shall apply.
- 11.6 The Class Representative shall seek approval from the Funder before agreeing any changes to, or entering into any additional or alternative, Conditional Fee Agreement(s) and/or before agreeing any changes to, entering into any additional or alternative, contracts with the Counsel Team and/or Solicitors and in particular shall have the form of such contract and the inclusion of any limitations of liability approved.

## **12 Representations, warranties and undertakings**

- 12.1 As at the Commencement Date the Class Representative makes the following representations and warranties:
  - 12.1.1 the Class Representative has not committed any Prohibited Act;
  - 12.1.2 the Class Representative is not aware of any material fact or circumstance that has not been disclosed to the Funder and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it; and
  - 12.1.3 the Class Representative has not granted (or purported to grant) any charge, lien or other security in favour of a third party over the Claim or any Proceeds (or otherwise dealt with the same in any way);
  - 12.1.4 the Class Representative will not grant (or purport to grant) any such charge, lien or other security or otherwise deal with the Claim or the Proceeds in any way until

all payments to the Funder and the Uplift have been met or otherwise extinguished; and

- 12.1.5 the Class Representative warrants and acknowledges that she has taken independent legal advice on the terms of this Agreement prior to entering into it.
- 12.2 The Funder and the Class Representative each warrant that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and the persons executing the Agreement have the necessary and appropriate authority to do so.

### **13 Recovery**

- 13.1 In the event that the CAT awards Damages or Cost Recoveries, the Class Representative shall use her best endeavours to cause any such Damages or Cost Recoveries to be recovered as quickly and comprehensively as possible. The cost of such endeavours shall be Class Representative's Costs and deemed to be included within the Cost Forecast save that the total amount of the Funder Aggregate Commitment shall remain unaffected.

### **14 Application of Proceeds**

#### **Costs Recoveries**

- 14.1 Subject to any applicable order or ruling of the CAT, the Class Representative shall, and shall instruct the Solicitors to apply all Costs Recoveries in the following order of priority, and with all payments within that priority level to be made *pari passu* and *pro rata*, promptly upon receipt of such Costs Recoveries:
  - 14.1.1 firstly, in or towards payment to the Funder until the Funder has received an amount equal to the Funding Amount less any Interim Costs Payments received by the Funder; and
  - 14.1.2 secondly, to the Solicitors and the Counsel Team in respect of any outstanding and unpaid Uplifts that are due to each of them respectively.
- 14.2 Subject to any applicable order or ruling of the CAT, should the Class Representative be unsuccessful but still receive a costs award, such award shall be distributed in accordance with Clause 14.1.

#### **Damages**

- 14.3 Subject to any applicable order or ruling of the CAT, the Class Representative shall, and shall instruct the Solicitors and, if applicable, any Distribution Agent, to apply all Damages in the following order of priority, and with all payments within that priority level to be made *pari passu* and *pro rata*, promptly upon receipt of such Damages, and taking into account any amounts which may have been applied in accordance with Clause 14.1:
  - 14.3.1 firstly, in or towards payment to the Funder until the Funder has received an amount equal to the Funding Amount less any Interim Costs Payments received by the Funder;
  - 14.3.2 secondly, to the Solicitors and the Counsel Team in respect of any outstanding and unpaid Uplifts that are due to each of them respectively;
  - 14.3.3 thirdly, in payment to each Class Member who has claimed their entitlement to Damages prior to the expiry of the period during which they may make such a Claim as determined by the CAT;
  - 14.3.4 in the event there are undistributed Damages and, because of a ruling of the CAT, either the Funder has not received an amount equal to the Funding Amount less

any Interim Costs Payments or the Solicitors and the Counsel Team have not received an amount equal to their respective uplifts, the Class Representative shall apply to the CAT for an order for the payment of these outstanding amounts in the priority set out in clauses 14.3.1 and 14.3.2; and

- 14.3.5 finally, in payment of any remaining Damages to the charity designated in accordance with section 47C(5) of the Competition Act 1998.

#### **Settlement Proceeds**

- 14.3.6 Where Settlement Proceeds include separate identified sums in respect of Costs Recoveries and Damages, distribution shall be determined in accordance with Clauses 14.1 and 14.3 of this Agreement.

- 14.3.7 Where Settlement Proceeds are a global sum inclusive of Costs Recoveries and Damages, and subject to any applicable order or ruling of the CAT, the Class Representative shall, and shall instruct the Solicitors and, if applicable, any Distribution Agent, to apply all Settlement Proceeds in the following order of priority, and with all payments within that priority level to be made *pari passu* and *pro rata*, promptly upon receipt of such Settlement Proceeds:

- (a) first, in or towards payment to the Funder until the Funder has received an amount equal to the Funding Amount less any Interim Costs Payment received by the Funder;
- (b) secondly, to the Solicitors and the Counsel Team in respect of any outstanding and unpaid Uplifts that are due to each of them respectively; and
- (c) thirdly, in payment to each Class Member of their respective proportionate share of the balance of the Settlement Proceeds; and
- (d) finally, to the extent that any Class Members do not claim their proportionate share of the balance of the Settlement Proceeds pursuant to Clause 14.3.7(c), in payment of any unclaimed Settlement Proceeds in accordance with the terms of the relevant Settlement agreement(s).

- 14.4 The Class Representative shall not be obliged to make payments to the Funder that are more than the Proceeds it recovers.

- 14.5 For the avoidance of doubt, payment of any Uplift shall be made from available Damages, Settlement Proceeds and/or Cost Recovery only and the Funder shall be under no obligation to provide Funding under this Agreement in respect of payment of any Uplift.

- 14.6 It is acknowledged that the Parties, the Solicitors and the Counsel Team shall enter into the Adherence Agreements to give effect to the provisions of this Clause 14.

- 14.7 In the event that the CAT orders that amounts owed to the Solicitors and the Counsel Team in respect of any Uplifts due to each of them respectively cannot be paid out before Damages are paid to each Class Member in the manner contemplated by clauses 14.3.2 and 14.3.3, then the Parties will seek to renegotiate Clause 14 in good faith as needed.

#### **15 Trust**

- 15.1 Subject always to any contrary order of the CAT, the Class Representative shall hold all Proceeds received Trust Property on trust for the benefit of the beneficiaries entitled to share in the distribution of the Proceeds in accordance with Clause 14 (Application of Proceeds) in such shares as is specified in that Clause and until such time as all Proceeds are received and distributed as contemplated by Clause 14 of this Agreement (**Trust Period**).



## **16 Settlement**

- 16.1 The Class Representative agrees not to make, accept, withdraw or reject an Offer of Settlement without:
- (a) having received advice from the Solicitors and/or Counsel Team that it is reasonable to take such a step in all the circumstances;
  - (b) giving the Funder prior notification of the intention to take such a step and having provided a copy of such advice to the Funder; and
  - (c) having provided the information in (b) above, given the Funder reasonable time to assess it and ask further questions, and then sought the Funder's opinion in the light of that information; and
  - (d) (where applicable) having sought any opinion of an Assessor as set out below.
- 16.2 The Class Representative agrees that in the event that it is advised by the Solicitors and/or the Counsel Team that it is reasonable to settle the Proceedings, it shall keep the Funder closely informed at all times and provide the Funder with the advice in writing along with any other information that it may reasonably request and take all reasonable steps to seek the Funder's opinion and agreement to the proposed course of action.
- 16.3 The Funder may, by written Notice to the Class Representative, require the appointment of an Assessor to make an independent written assessment of whether the Class Representative should accept or reject an Offer of Settlement made on behalf of one or more Defendants (a **Settlement Assessment**).
- 16.4 If the Funder gives Notice to the Class Representative in accordance with Clause 16.3 requiring an Assessor to be appointed, the Class Representative shall:
- (a) not accept or reject the Offer of Settlement, or make an application for the CAT's approval of the Offer of Settlement, pending the Settlement Assessment;
  - (b) within five Business Days, appoint the Assessor jointly with the Funder;
  - (c) instruct the Solicitors to provide the Assessor with a report setting out details of the Proceedings and the Offer of Settlement in form and substance satisfactory to the Funder; and
  - (d) provide such other information about the Proceedings and the Offer of Settlement as the Assessor may request.
- 16.5 The Class Representative and the Funder agree that prior to the Class Representative making any decision in respect of an Offer of Settlement, she will consider and have regard to the opinion set out in the Settlement Assessment and any recommendation made by the Assessor in the Settlement Assessment.
- 16.6 The costs of the Assessor shall not form part of the Class Representative's Costs.

## **17 Termination of Funding and Consequences**

- 17.1 Without prejudice to Clause 2 (Commencement) and subject to earlier termination of this Agreement pursuant to this Clause 17, this Agreement shall continue in full force and effect until payment of any and all sums due to the Funder pursuant to this Agreement.

### **Termination for Material Adverse Decline etc**

17.2 In the event that:

- 17.2.1 the Funder refuses to provide specific further authority to the Class Representative to issue the Claim at the CAT, pursuant to Clause 2.2; or
- 17.2.2 subject to Clause 17.3, in the Funder's reasonable determination there is a Material Adverse Decline, provided that the Funder's reasonable determination is based on external legal and/or expert advice that has been provided to the Funder; or
- 17.2.3 in the Funder's reasonable determination, the ongoing funding of the Proceedings no longer represents value for money for the Class as a whole provided that the Funder's reasonable determination is based on an assessment by the Accounting Officer that the ongoing funding no longer meets the standards for value for money for the use of public resources and that prior to coming to that assessment the Accounting Officer has sought input on value for money from the Class Representative; and/or
- 17.2.4 there is an Adverse Class Representative Event.

the Funder may by Notice terminate this Agreement.

17.3 Without prejudice to its rights to terminate this Agreement in accordance with clause 17.2.1, 17.2.3 and 17.2.4:

- 17.3.1 the Funder shall not be entitled to terminate this Agreement under Clause 17.2.2 where that is against the written legal and/or expert advice sought; and
- 17.3.2 prior to the Funder exercising its rights to terminate this Agreement in accordance with Clause 17.2.2, it shall provide the Class Representative with a reasonable opportunity to address the Funder's concerns and the opportunity for the Class Representative to exercise its rights pursuant to Clause 19 (Disputes).

17.4 Where the Funder gives Notice to terminate the Agreement in accordance with either 17.2.2 or 17.2.3, prior to that termination coming into effect it shall provide the Class Representative with a further twenty (20) Business Days to put in place alternative funding arrangements, including the discharge of any order for security.

**Termination for material breach by the Class Representative**

- 17.5 In the event that the Funder reasonably considers that there has been a material breach of this Agreement by the Class Representative, the Funder may notify the Class Representative that the Funder requires her to remedy the breach within twenty (20) Business Days. Upon receiving a Notice pursuant to this Clause 17.5, the Class Representative is entitled within twenty (20) Business Days to refer the matter to dispute resolution in accordance with Clause 19 (Disputes).
- 17.6 In the event that the breach is not remedied within twenty (20) Business Days of the later of the Parties rights pursuant to Clause 19 (Disputes) being exhausted or the Notice being served pursuant to clause 17.5, the Funder shall be entitled to give Notice to the Class Representative of its intention to terminate this Agreement.
- 17.7 Upon the Funder issuing the Class Representative of a notice of intention to terminate, the Funder agrees to provide the Class Representative a further twenty (20) Business Days to put in place alternative funding arrangements. At the end of the twenty (20) Business Days period, the Funder shall be entitled to terminate the Agreement, save that the Funder will not be entitled to terminate if the material breach has been remedied by the Class Representative.

**Termination for material breach by the Funder**

- 17.8 In the event of a material breach of this Agreement by the Funder, the Class Representative may notify the Funder that the Class Representative requires the Funder to remedy the

breach within twenty (20) Business Days. Upon receiving a Notice pursuant to this clause 17.8, the Funder is entitled within twenty (20) Business Days to refer the matter to dispute resolution in accordance with Clause 19 (Disputes).

- 17.9 In the event that the breach is not remedied within twenty (20) Business Days of the later of the Parties rights pursuant to Clause 19 (Disputes) being exhausted or the Notice being served pursuant to clause 17.9, the Class Representative shall be entitled to terminate this Agreement forthwith by giving Notice to the Funder.

#### **Rights and liabilities accrued prior to termination**

- 17.10 Termination of this Agreement shall not affect any accrued rights or liabilities, including, without limitation, any arising in relation to any Adverse Costs or Class Representative's Costs, nor will it affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination, including, but not limited to Clauses 12, 13, 14, 15, 16, 17, 19, 20-37 (inclusive) including in particular its rights to information, to continue to hold its security and to be paid any amounts due to it under this Agreement.

#### **Continuation of Proceedings**

- 17.11 If the Class Representative continues with the Proceedings or any Claim after the Termination Date and there is subsequently Success in the Proceedings, Clause 14 (Application of Proceeds) and Clause 15 (Trust) shall, subject to any applicable order or ruling of the CAT or other Court, continue to apply in respect of all Proceeds received or recovered by the Class Representative that are outstanding at the date of Termination.

### **18 Change in Class Representative**

- 18.1 In the event of an Adverse Class Representative Event, the Funder may serve a Notice on the Class Representative, indicating the Funder's desire for the Class Representative to withdraw as the class representative in the Proceedings and the Class Representative to be replaced with a substitute Class representative (a **Replacement Notice**).
- 18.2 Following receipt of a Replacement Notice, in the event the Class Representative accepts the Replacement Notice, the Class Representative shall cooperate in good faith in notifying the CAT that the Class Representative agrees to withdraw as the proposed class representative (or if the Proceedings are certified, class representative) and will cooperate with the Funder to assist the Funder in handing over conduct of the Proceedings to an alternative proposed class representative authorised by the CAT, if applicable.

### **19 Disputes**

- 19.1 In relation to any other dispute arising from this agreement other than those outlined in Clause 19.3, the Parties agree that they will follow the following procedure:
- 19.1.1 the Parties must use reasonable endeavours and act in good faith to resolve any disputes arising from this Agreement;
  - 19.1.2 prior to implementing any dispute resolution mechanism in this Agreement, the Parties must convene a meeting between the Class Representative (or their Solicitors) and the Funder and endeavour to resolve the dispute within fifteen (15) Business Days; and
  - 19.1.3 in the event the Parties are unable to resolve the dispute within fifteen (15) Business Days, either Party can issue a Notice requiring the dispute to be resolved in accordance with Clause 19.2. In the event the dispute relates to the Funder's right to terminate this agreement pursuant to Clause 17.2.2, the right to

terminate is suspended, until the Independent Specialist Counsel provides their binding opinion in accordance with Clause 19.2(b).

- 19.2 In the event either Party serves a Notice in accordance with Clause 19.1.3, the Party which served the notice shall be entitled to direct the Solicitors to refer the dispute to an Independent Specialist Counsel as follows:
- (a) the Independent Specialist Counsel is to be agreed between the Parties or, in lieu of such agreement, to be nominated by the Chairman of the Bar Council. Such Independent Specialist Counsel shall be deemed to be jointly instructed by both Parties;
  - (b) the Independent Specialist Counsel shall be instructed to provide an opinion on the dispute. The Parties agree that the Independent Specialist Counsel's opinion shall be final and binding on each one of them.
  - (c) In giving any opinion, the Independent Specialist Counsel shall also be instructed to determine which one or more of the Parties should bear the Independent Specialist Counsel fees of giving the opinion (and, if more than one Party, the shares in which they are each to bear those fees) and the Parties agree to be bound by this determination as to liability for the Independent Specialist Counsel fees.
- 19.3 For the avoidance of doubt, this Clause 19 does not apply in respect of:
- 19.3.1 any Offer of Settlement or decision made by the Class Representative in accordance with Clause 16;
  - 19.3.2 in relation to a dispute regarding:
    - (a) any claim for payment of Class Representative's Costs, where the provisions of Clause 4.5 shall apply;
    - (b) any proposal to: amend the Cost Forecast; fund the bringing of, or defence of, an Appeal; increase the Aggregate Funding Commitment, or; increase the Adverse Costs Indemnity Limit all of which shall be determined at the absolute discretion of the Funder;
    - (c) any exercise by the Funder of its rights to terminate this Agreement in accordance with clause 17.2.1, 17.2.3 and 17.2.4.

## **20 Duty of Confidentiality**

- 20.1 In providing to the Funder any documents or information about the Claim and/or the Proceedings the Class Representative does not intend to waive any legal privilege that may attach to such documents or information.
- 20.2 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted, the Class Representative shall treat all Confidential Information belonging to the Funder as confidential and shall not disclose any Confidential Information belonging to the Funder to any other person without the prior written consent of the Funder, except to the Solicitors, the Counsel Team, the Advisory Panel and/or any other third parties providing advice to the Class Representative in connection with the Proceedings.
- 20.3 The Class Representative may disclose the terms of this Agreement during the Proceedings on such terms and on such occasions as is reasonably required, with any information which is Confidential Information belonging to the Funder or the Class Representative redacted and/or subject to any order of the CAT regarding confidentiality.
- 20.4 Nothing in this Clause 20 shall prevent the Funder disclosing any Confidential Information obtained from the Class Representative:

- 20.4.1 for the purpose of the examination and certification of the Funder's accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Funder has used its resources;
- 20.4.2 to any government department, consultant, contractor, Audit Agent or other person engaged by the Funder, provided that in disclosing information, the Funder only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or
- 20.4.3 where disclosure and/or publication is required by Law, including under the Information Acts and/or Public Contracts Regulations 2015.

## **21 Monitoring and Reporting**

### **21.1 The Class Representative shall:**

- 21.1.1 provide monthly reports against the Cost Forecast to demonstrate costs incurred against anticipated forecast costs;
  - 21.1.2 closely monitor the progress and likelihood of, regularly seek advice from the Counsel Team and/or the Solicitors and report to the Funder on items (a) to (e) inclusive below: (i) at the end of each phase of the litigation as set out in the Cost Forecast, (ii) on reasonable request from the Funder. and (iii) as soon as possible where it considers there is a material adverse impact upon any of those items (a) to (e) being:
    - (a) the Success of the Claim;
    - (b) the prospect of a Material Adverse Decline;
    - (c) the risk of exposure to Adverse Costs;
    - (d) the prospect of a change in the value for money assessment of the Claim as a whole; and
    - (e) any prospect of an Adverse Class Representative Event occurring
- during the Funding Period;
- 21.1.3 provide the Funder with reasonable and proportionate assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Funder may require, from time to time, so the Funder may establish if the Class Representative has used the Funding in accordance with this Agreement;
  - 21.1.4 allow any person authorised by the Funder reasonable access, with or without notice, to records, for the purpose of discussing, monitoring and evaluating the Class Representative's fulfilment of its obligations under this Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required during the Funding Period;
  - 21.1.5 will record in its financial reports the amount of Funding it receives together with details of what it has used that Funding for; and
  - 21.1.6 notify the Funder as soon as reasonably practicable of any actual or potential failure to comply with any of its obligations under this Agreement, which includes those caused by any administrative, financial or managerial difficulties.

### **21.2 The Class Representative shall provide a final report of all expenditure and Recovery in relation to the Proceedings within one month of Settlement.**

21.3 The Class Representative represents and undertakes (and shall repeat such representations and undertakings on delivery of each Monitoring Report):

21.3.1 that the reports and information it gives pursuant to this Clause 21 are accurate; and

21.3.2 that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given.

## **22 Auditing and Assurance**

22.1 Within six months of the end of each Financial Year the Class Representative will provide the Funder with written confirmation that the Funding Amounts paid to the Class Representative have been used in connection with the Proceedings.

22.2 The Class Representative shall at all times co-operate with the Audit Agents for the purposes of establishing complete transparency in the way in which the Funding is calculated and paid under this Agreement.

22.3 During the Funding Period and for a period of 7 years following the end of the Funding Period, the Class Representative shall maintain and retain the Open Book Data and disclose and allow the Funder and/or the Audit Agents access to the Open Book Data and the Funder may during this time conduct additional audits or ascertain additional information where the Funder considers it necessary. The Class Representative agrees to grant the Funder, its Class Representatives and/or its Audit Agents access, as required, to all sites and relevant records. The Class Representative will ensure that necessary information and access rights are explicitly included within all arrangements with Solicitors, the Counsel Team and any other third parties providing advice or services in connection with the Proceedings.

## **23 Retention of documents**

23.1 The Class Representative shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Funding during the Funding Period for a period of 7 years from the date on which the Funding Period ends.

23.2 The Class Representative shall ensure that the Solicitors, Counsel Team and any other and any other third parties providing advice or services in connection with the Proceedings retain each record, item of data and document relating to the Proceedings for a period of 7 years from the date on which the Funding Period ends.

## **24 Financial Management and Prevention of Bribery, Corruption, Fraud and other Irregularity**

24.1 The Class Representative will at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.

24.2 All cases of fraud or theft (whether proven or suspected) relating to the Funding must be notified to the Funder as soon as they are identified. The Class Representative shall explain to the Funder what steps are being taken to investigate the irregularity and shall keep the Funder informed about the progress of any such investigation. The Funder may however request that the matter referred (which the Class Representative is obliged to carry out) to external auditors or other third party as required.

24.3 The Funder will have the right, at its absolute discretion, to insist that the Class Representative address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Funding to the Class Representative. Any grounds for suspecting financial irregularity includes what the Class Representative, acting with due care, should have suspected as well as what it actually proven.

- 24.4 The Class Representative agrees and accepts that it may become ineligible for Funding support and may be required to repay all or part of the Funding if it engages in tax evasion or aggressive tax avoidance in the opinion of HMRC.
- 24.5 For the purposes of this Clause 24 “financial irregularity” includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Funding for any purpose other than those stipulated in this Agreement. The Class Representative may be required to provide statements and evidence to the Funder or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **25 Conflict of Interest**

- 25.1 Other than the Class Representative's duty in the Proceedings to act in the Interests of Class Members, the Class Representative shall not engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Agreement.

## **26 Statutory Duties**

- 26.1 The Class Representative agrees to adhere to its obligations under the Law including but not limited to the Information Acts.
- 26.2 Where requested by the Funder, the Class Representative will provide reasonable assistance and cooperation to enable the Funder to comply with its information disclosure obligations under the Information Acts.
- 26.3 On request from the Funder, the Class Representative will provide the Funder with all such relevant documents and information relating to the Class Representative's data protection policies and procedures as the Funder may reasonably require.
- 26.4 The Class Representative acknowledges that the Funder, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Class Representative and this Agreement without consulting the Class Representative.
- 26.5 The Funder will take reasonable steps to notify the Class Representative of a request for information to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in this Agreement, the Funder will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## **27 Data Protection**

The Class Representative and the Funder will comply at all times with their respective obligations under Data Protection Legislation.

## **28 Assignment**

This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

## **29 No Partnership or Agency**

- 29.1 Save where explicitly stated in this Agreement, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

### 30 Notices and Communications

30.1 Any Notice given to a Party under or in connection with this Agreement shall be in writing and shall be:

- 30.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 30.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):

(a) **Class Representative:**

Clare Spottiswoode ([REDACTED])

With a copy to Ashurst LLP ([REDACTED] and [REDACTED]).

(b) **Funder:** [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED])

With a copy to TLT LLP ([REDACTED], [REDACTED] and [REDACTED])

30.2 Any Notice shall be deemed to have been received:

- 30.2.1 if delivered by hand, at the time the Notice is left at the proper address; or
- 30.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 30.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

### 31 Independent Legal Advice

31.1 The Class Representative agrees that in entering into this Agreement, she has taken such independent legal advice prior to entering into this Agreement and she has not relied on the Funder, its officers, employees, advisers (including but not limited to its litigation advisors) or representatives in deciding whether or not to enter into this Agreement and in deciding whether or not to bring the Proceedings.

31.2 By entering into this Agreement, the Class Representative agrees and accepts that neither the Funder nor their officers, employees, advisers (including but not limited to its litigation advisors) or representatives owe any obligation, responsibility or duty to the Class Representative save as expressly set out in this Agreement and do not accept any liability to the Class Representative or any third party whatsoever save as expressly set out in this Agreement.

### 32 Severance

32.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

32.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 32.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.



### **33 Third Party Rights**

- 33.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 33.2 The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

### **34 Entire Agreement**

- 34.1 This Agreement and the Transaction Documents constitute the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

### **35 Variation**

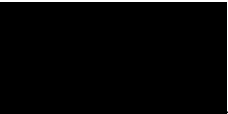


- 35.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

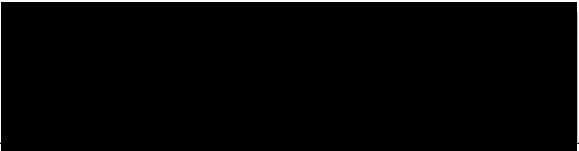
### **36 Waiver**

- 36.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 36.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

### **37 Governing Law and Jurisdiction**

- 37.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 37.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or Claim (including non-contractual disputes or Claims) arising out of or in connection with this Agreement or its subject matter or formation.

|   |  |
|---|--|
| Signed by an authorised signatory for and on behalf of the Secretary of State for the Home Department |  |
| Signature:  |  |
| Name:   |   |
| Position:   | Acting Chief Commercial Officer  |
| Address   |  |

|                                  |  |
|----------------------------------|--|
| Signed by Clare Spottiswoode CBE |  |
| Signature:                       |  |
| Name:                            | Clare Spottiswoode CBE   |

**Schedule 1**

**Cost Forecast - Not included in this redacted version**

## **Schedule 2**

### **Class Representative's Remuneration**

Capitalised terms in this Schedule 2 reference the definitions in the Agreement.

The Funder and the Class Representative agree the following in respect of the Class Representative's remuneration:

1. The Class Representative's remuneration shall be based on the time spent by the Class Representative in pursuing the Proceedings and the hourly charging rate, of £200 per hour (exclusive of VAT).
2. In addition, the Funder agrees that the Class Representative is able to invoice the Funder for reasonable costs and expenses in relation to pursuing the Proceedings.
3. The Class Representative agrees that for each financial year, her Remuneration and any relevant costs and expenses are capped at no more than £50,000 per annum (exclusive of VAT).
4. The Class Representative agrees to issue the Funder with an invoice, monthly for her time spent pursuing the Proceedings.
5. The Funder will submit invoices with supporting narratives and evidence to the Funder for payment, within 21 days.
6. The Funder and the Class Representative agree that Clause 4 (Class Representative's Costs) of the Agreement shall govern the submission, authorisation and payment of the Class Representative's remuneration.

**Schedule 3**

**Adherence Agreement**

# Adherence Agreement

**THIS AGREEMENT** is made on \_\_\_\_\_ 2024

## **BETWEEN:**

1. **The Secretary of State for the Home Department** as part of the Crown whose principal address is 2 Marsham Street, London, SW1P 4DF, United Kingdom (the **Authority**);
2. **Clare Spottiswoode CBE**, of a private residential address, London (the **Class Representative**);
3. **Ashurst LLP** (registered number OC330252) whose registered address is the London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW (the **Solicitors**);
4. **Anneli Howard KC**, of Monckton Chambers of Grays Inn, 1 & 2 Raymond Buildings, London, WC1R 5NR;
5. **Rhodri Thompson KC**, of Matrix Chambers of The Griffin building, Grays Inn Road, London, WC1R 5LN; and
6. **Suzanne Rab**, of Serle Court Chambers of 6 New Square Lincoln's Inn, London WC2A 3QS.

Each a **Party** and together the **Parties**, and the Parties other than the Authority and the Class Representative are collectively defined herein as the **Adhered Parties**.

## **BACKGROUND:**

- (A) This agreement is supplemental to:
- (1) The Solicitors' Engagement Letter and Terms of Business (the **Engagement**) dated \_\_\_\_\_ 2024 between the Solicitors and the Class Representative pursuant to which the Solicitors agreed to act for the Class Representative on the terms set out therein;
  - (2) the Conditional Fee Agreement (the **CFA**) dated \_\_\_\_\_ 2024 between the Solicitors and the Class Representative pursuant to which the Solicitors agreed to act for the Class Representative on a conditional fee basis;
  - (3) the individual Conditional Fee Agreements dated \_\_\_\_\_ 2024 between the Solicitors and each of Ms Howard KC, Mr Thompson KC and Ms Rab pursuant to which Counsel agreed to act for the Class Representative on a conditional fee basis (collectively, the **Counsel CFAs**); and
  - (4) the litigation funding agreement (the **Funding Agreement**) dated \_\_\_\_\_ 2024 between the Authority and the Class Representative pursuant to which the Authority has agreed to fund the Class Representative on the terms set out therein.
- (B) Counsel are barristers instructed by the Solicitors to assist with the prosecution of the Proceedings.
- (C) At the request of the Authority, the Adhered Parties have agreed to enter into this agreement.

## **AGREED TERMS:**

1. Words and expressions used in this agreement shall, unless the context expressly requires otherwise, have the meaning given to them in the Funding Agreement.

2. The Adhered Parties confirm that they have been supplied with a copy of the Funding Agreement.
3. The Adhered Parties undertake to the Authority that, from the date of this agreement, the Parties shall observe and perform the obligations on their respective parts pursuant to the Funding Agreement, the Engagement, the CFA and Counsel CFAs and acknowledge that the Authority is relying on this undertaking in consideration of it entering into and performing its obligations under the Funding Agreement and that the Adhered Parties may be liable to the Authority if it fails to so perform their respective obligations to the requisite standards.
4. It is acknowledged that the Adhered Parties agree to their respective obligations under this agreement in consideration for the Authority and the Class Representative entering into the Funding Agreement, CFA and Counsel CFAs respectively.
5. It is agreed that, subject to any Order of the Competition Appeal Tribunal to the contrary, all sums due to any of the Parties pursuant to any of the Engagement, the CFA and the Counsel CFAs shall be paid out in accordance with the terms of the Funding Agreement until all such sums are discharged or until the Recovery is exhausted, whichever is the earlier.
6. The Adhered Parties agree to be bound by the terms of Clause 14 (*Application of Proceeds*) of the Funding Agreement which, subject to any Order of the Competition Appeal Tribunal is intended to determine the priority order for distribution between the Parties of sums recovered in the Proceedings.
7. In the event of a conflict between the terms of this agreement and the terms of the Funding Agreement, the terms of the Funding Agreement shall take precedence and shall determine the entitlements of the Adhered Parties to the Recovery.
8. The Adhered Parties (excluding the Funder) shall, on behalf of the Class Representative, prosecute the Proceedings diligently to its conclusion irrespective of whether the Aggregate Authority Commitment in the Funding Agreement is reached. For the avoidance of doubt, nothing in this Agreement shall limit any of the Adhered Parties' rights to terminate under the Engagement, the CFA, the Counsel CFAs or the Funding Agreement.
9. The Adhered Parties (excluding the Funder) shall not do or omit to do anything that would put the Class Representative in breach of its obligations under the Funding Agreement.
10. Nothing in this agreement shall affect the underlying liability of the Class Representative to pay all sums which may fall due for payment to the Adhered Parties.

**NOTICES:**

11. Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered by hand, email or by courier or sent by prepaid first class post:

|  |   |
|--|---|
| in the case of the <b>Solicitors</b> to: | Ashurst LLP   |
| Address                                  | London Fruit & Wool Exchange, 1 Duval Square,<br>London, E1 6PW |
| Attention:                               | Euan Burrows ( [REDACTED] ) and<br>[REDACTED]                   |
|  |   |

|  |   |
|--|---|
| in the case of the <b>Class Representative</b>   |   |
| Address:   | London Fruit & Wool Exchange, 1 Duval Square,<br>London, E1 6PW   |
| Attention:                                       | Clare Spottiswoode ( )<br>With a copy to Ashurst LLP<br>( ) and<br>( )  |
| in the case of <b>Anneli Howard KC</b> to:       | Monckton Chambers   |
| Address  | Grays Inn, 1 & 2 Raymond Buildings, London, WC1R<br>5NR   |
| Attention:                                       | Anneli Howard KC ( )  |
|  |   |
| in the case of the <b>Rhodri Thompson KC</b> to: | Matrix Chambers   |
| Address  | The Griffin building, Grays Inn Road, London, WC1R<br>5LN   |
| Attention:                                       | Rhodri Thompson KC<br>( )   |
|  |   |
| in the case of the <b>Suzanne Rab</b> to:        | Serle Court Chambers  |
| Address  | 6 New Square Lincoln's Inn, London WC2A 3QS   |
| Attention:                                       | Suzanne Rab ( )   |
|  |   |
| in the case of the <b>Authority</b> to:          | The Secretary of State for the Home Department  |
| Address  | 2 Marsham Street, London, SW1P 4DF, United Kingdom  |
| Attention:                                       | <br>( )<br>and ( )<br>and copied to TLT as legal representatives of the Funder<br>to the following:<br><br>( ), ( )<br>and ( ). |



and shall be deemed to have been duly given or made as follows:

- (a) if delivered by hand or by courier, upon delivery at the address of the relevant Party;
- (b) if sent by first class post, two Business Days after the date of posting;
- (c) if sent by email, the date on which the relevant email was sent;

provided that if, in accordance with the above provisions, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. on a Business Day such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

- 12. In proving service it shall be sufficient to prove that the notice or other communication was addressed to the address of the relevant Party set out in this agreement (or as otherwise notified by that Party under clause 13 of this agreement) and that if:
  - (a) left by hand, that the envelope containing the document was left at the relevant address; or
  - (b) sent by email, that despatch of the email was confirmed.
- 13. A Party may notify the other Party of a change to its name, relevant addressee or address for the purposes of clause 11 provided that such notification shall only be effective on:
  - (d) the date specified in the notification as the date on which the change is to take place; or
  - (e) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

## **VARIATIONS**

- 14. This agreement may be varied only in writing and signed by or for on behalf of each of the other Parties.

## **WAIVER**

- 15. A waiver of any term, provision or condition of, or consent granted under, this agreement shall be effective only if given in writing and signed by the waiving or consenting Party and then only in the instance and for the purpose for which it is given.
- 16. No failure or delay on the part of any Party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 17. No breach of any provision of this agreement shall be waived or discharged except with the express written consent of the other Party.
- 18. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

## **INVALIDITY**

19. If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction:
- (a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
  - (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,
- shall not be affected or impaired in any way.

## **COUNTERPARTS**

20. This agreement may be executed in any number of counterparts which together shall constitute one agreement. Any Party may enter into this agreement by executing a counterpart and this agreement shall not take effect until it has been executed by all Parties.
21. Delivery of (i) an executed signature page of a counterpart in Portable Document Format (PDF); and (ii) the execution version of this agreement sent by email shall take effect as delivery of an executed counterpart of this agreement. If such method is adopted, without prejudice to the validity of such agreement, each Party shall provide the others with the original of such page as soon as reasonably practicable thereafter.

## **GOVERNING LAW AND DISPUTE RESOLUTION**

22. This agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation (including any non-contractual disputes or claims), shall be governed by and construed in accordance with English law.
23. Each Party to this agreement irrevocably agrees that a sole arbitrator under the rules of the London Court of International Arbitration shall have exclusive jurisdiction to settle any disputes or claims, which may arise out of or in any way relate to this agreement or its formation.

## **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

24. The Parties do not intend to confer any rights on any person not a Party to this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999, and the Parties may amend, vary or terminate this agreement in such a way as may affect any rights or benefits of any other person without their consent.

## **ENTIRE AGREEMENT**

25. Each Party acknowledges to and agrees with the other Parties that:
- (a) this agreement constitutes the entire and only agreement between the Parties relating to the subject matter of this agreement; and
  - (b) it has not been induced to enter into this agreement in reliance upon, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in this agreement and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto;

26. provided that the provisions of this clause 25 shall not exclude any liability which any of the Parties would otherwise have to any other Party or any right which any of them may have in respect of any statements made fraudulently by any of them prior to the execution of this Agreement or any rights which any of them may have in respect of fraudulent concealment by any of them.

**EFFECTIVE DATE**

27. Notwithstanding the date for execution of this agreement, the Parties agree that the effect date of this agreement shall be \_\_\_\_\_ 2024

Signatures

|   |  |
|---|--|
| Signed by an authorised signatory for and on behalf of the Secretary of State for the Home Department |  |
| Signature:  |  |
| Name:   |  |
| Position:   |  |
| Address   |  |

|                                  |  |
|----------------------------------|--|
| Signed by Clare Spottiswoode CBE |  |
| Signature:                       |  |
| Name:                            |  |

|  |  |
|--|--|
| Signed by an authorised signatory for and on behalf of Ashurst LLP |  |
| Signature:   |  |
| Name:  |  |

|           |  |
|-----------|--|
| Position: |  |
|-----------|--|

|                            |  |
|----------------------------|--|
| Signed by Anneli Howard KC |  |
| Signature:                 |  |
| Name:                      |  |

|                              |  |
|------------------------------|--|
| Signed by Rhodri Thompson KC |  |
| Signature:                   |  |
| Name:                        |  |

|                       |  |
|-----------------------|--|
| Signed by Suzanne Rab |  |
| Signature:            |  |
| Name:                 |  |

**Schedule 4 Advisory Panel TOR - Not included in this redacted version**

**Schedule 5 Funding Agreement Memorandum of Understanding - Not included in this redacted version**