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| Conditional fee agreement  for use where the lay client is a defendant  Chambers Name |
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**Conditional fee agreement**

Part One: Administrative Details

**“Agreement Date”** Select date

**“Chambers”** name of chambers of address

**“The Professional Client”** name of professional client of address

**“The Lay Client”** name of lay client of address

**“Primary Counsel”** name of counsel

**“The Opponent”** name or details of opponent

**“The Claim”**  Details of claim

Part Two: Scope of Agreement

 The **Agreement** covers all the work since counsel was first instructed.

 The **Agreement** covers only that work carried out after the **Agreement Date**.

Part Three: Type of Agreement

 **Type One Agreement:** This **Agreement** is a **traditional ‘no win no fee’** agreement where counsel will not be paid unless the claim is dismissed.

 **Type Two Agreement:** The **Agreement** is a **traditional ‘no win no fee’** but **Counsel** will be paid if the Opponent is ordered to pay costs as a result of a Part 36 Offer having been made.

 **Type Three Agreement:** This is a ‘**CFA Lite’** (or ‘no cost to you’ agreement) where **Counsel** is paid only those monies that are recovered from the **Opponent**. Specialist advice should be taken before using this type of agreement in defendant cases.

 **Type Five Agreement:** This is a **discounted conditional fee agreement** (i.e., ‘no win, low fee’ agreement) where counsel is paid a discounted rate if the **Claim** is not successfully defended; the percentage of the **Ordinary** **Fees** payable in the event of this (i.e., the **Discount** **Fraction**) being 60 percent.

There is no Type Four Agreement for Defendants

Part Four: Success Fee

This Agreement:

 **Provides for a Success Fee**  **Does not provide for a Success Fee**

Unless stated otherwise, where this Agreement provides for a Success Fee, it will be is 100 percent of Ordinary Fees where the

claim concludes after the last day before trial, and 50 percent in all other cases.

These figures are based on the following risk assessment:

Click here to enter text.

Part Five: Hourly rates, brief fees and refreshers

**Brief Fee**  £00-00 (including first day)

**Refresher**  £00-00 per day

**Half refresher** £00-00 per part day

**Hourly rate** £00-00 per hour

Part Six: Partial recovery

In the event that the monies recovered from the **Opponent** are not sufficient to pay the **Reasonable** **Fees** of both the

**Professional** **Client** and **Counsel**, one of the following provisions will apply:

 **No adjustment will be made: Counsel’s** reasonable fees and **Expenses** will be payable in their entirety.

 **A proportionate adjustment will be made: Counsel** **Expenses** will be payable in full; thereafter, **Counsel** will be paid the same proportion of his reasonable fees as the **Professional** **Client**.

 **A fixed adjustment will be made: Counsel** **Expenses** will be payable in full; thereafter, **Counsel** will be paid in full subject to a fixed reduction that is set out in correspondence attached hereto.

If **Counsel’s** fees were agreed before they were incurred, those fees will be deemed to be reasonable.

Part Seven: Definition of ‘Win’ and ‘Favourable Terms’

 **Standard definitions:** The standard definitions (as set out under “Further terms used in this Agreement”) will apply.

 **Bespoke definitions:** Bespoke definitions will apply, the terms of which are either attached, or have been incorporated in the text below. This definition may be that ‘Win’ will mean that the Opponent is awarded a certain figure or less.

Click here to enter text.

Part Eight: Variations

 **Standard provisions:** The standard provisions will apply without variations.

 **Bespoke provisions:** The following variations have been made:

Click here to enter text.

Part Eight: Signatures

Signed by Chambers (on behalf of Counsel): …………………………………………….. (date) ………………………..

Signed by the Professional Client: ………………… ………………………….. (date) ………………………..

Signed by the Professional Client: ………………… ………………………….. (date) ………………………..

# Further terms used in this Agreement

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

**“Advocacy”**Shall mean appearing for the **Lay Client** at court hearings.

**“Agreement, the”**  Shall mean this agreement.

**“the last** Shall mean that the Claim concludes (i) after a trail has started, (ii) at any time after 00:01 hours on day the Claim

**day before trail”** was listed for trial (including **the** first trail if there is more than one), or (iii) on or after the first day of any trial window allocated to the Claim.

**“Counsel”** Shall mean whichever barrister is instructed by the **Professional Client** for the purposes of providing **Legal Services** regarding the **Claim**; where appropriate, references to ‘**Counsel’** will be interpreted as meaning any barrister who falls within that category (or, where appropriate, any agent for any such barrister).

**“Counterclaim”**Shall mean a claim that the **Lay Client** makes against the **Opponent** in response to the **Claim**.

**“Damages”**Shall mean money (other than costs) that the **Opponent** Wins, whether by a court decision or settlement. Where appropriate, it will include a debt.

**“Discounted Fees”** Shall mean a sum equivalent to the **Ordinary Fees** multiplied by the **Discount Fraction**.

**“Expenses”** Shall mean payments that **Counsel** makes for the purposes of providing **Legal Services**.

**“Favourable Terms”** If not otherwise defined, shall me that the **Claim** has concluded such that the **Opponent** is substantially denied the remedy it sought.

**“Finally”, “Final”, etc**  Shall mean that the **Opponent**: (i) is not allowed to appeal against the court decision; (ii) has not appealed in time; (iii) has lost any appeal; or has settled the Claim.

**“Interim Hearing”** Shall mean a court hearing that is not final.

**“Legal Services”** Shall mean any professional services regarding the Claim that a barrister may, in the course of acting as a barrister, reasonably provide his client, including **Advocacy**.

**“Lose”, “Lost”, etc** Shall mean the opposite of ‘**Win’**; unless the contrary is implied by the context, it shall mean **Finally Lose**.

**“Opponent’s charges”** Shall mean the **Opponent’s** legal fees, **Expenses** any **Success Fee** and/or any insurance premium.

**“Ordinary Fees”**Shall mean the fees that **Counsel** would have charged for providing **Legal Services** if those services had been provided upon instruction by a privately-paying **Lay Client**.

**“Part 36 Offer”** Shall mean an offer to settle the **Claim** made in accordance with Part 36 of the Civil Procedure Rules 1998.

**“Reasonable Fees”** Shall mean those fees that are reasonably claimed in all the circumstances, the appropriate measure of reasonableness being the standard basis as described in Part 44 of the Civil Procedure Rules 1998.

**“Success Fee”** Shall mean the percentage of **Ordinary Fees** that is added to those fees if the **Lay Client** **Wins** the **Claim**.

**“Trial”** Shall mean the final contested hearing or the contested hearing of any issue to be tried separately. (NB a reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgment.)

**“Win”, “Won”, etc** Shall mean that the **Claim** is **Finally** decided in the **Lay Client’s** favour in that, in a claim for money, the **Lay Client** is not ordered to pay any monies at all (not including costs), or that the Claim is withdrawn, discontinued, struck out, settled or otherwise brought to a Final conclusion that is on **Favourable Terms**. Where the **Claim** is not a money claim, “**Win**” will be defined by reference to the remedy or result sought and will be a substantial denial of the remedy the **Opponent** sought. For the avoidance of doubt, a compromise that achieves the same ends as that remedy or result will amount to a **Win**.

# The effect of this Agreement

* 1. This contract sets out the basis upon which **Counsel** will be paid for providing **Legal** **Services** to the **Lay** **Client**. It is an agreement that is designed to avoid disputes arising after it has been made, and as such, the parties have agreed in advance what will happen if the **Claim** does not result in recovery of sufficient monies to allow full payment of both **Counsel’s** fees and the **Professional** **Client’s** own fees and disbursements. The parties hereby acknowledge and agree both that there will be no need to enter into retrospective negotiations about the sums payable, and that this **Agreement** sets out rights that the parties intend to be enforced and expect to be enforced against them.
  2. The **Agreement** is a multipartite agreement whereby **Chambers** acts as **Counsel’s** agent and the **Professional** **Client** acts as the **Lay** **Client’s** agent. The **Lay** **Client** is not a party to this **Agreement**, but he is put on notice of certain obligations with which he is expected to comply. The **Professional** **Client** is a party to the **Agreement** and accepts full responsibility for paying Counsel’s fees. **Unless** the contrary is stated in writing, every barrister who is instructed after the **Agreement** **Date** will, upon accepting instructions, become a party to this **Agreement** as if he had put his name to it in writing at the time that it was first made. **Chambers** has a coordinating role, and to that extent (but only to that extent), is also a party to this **Agreement**.

# The ambit of the conditional fee agreement created by this Agreement

* 1. Unless it is agreed otherwise, the conditional fee agreement created by this **Agreement** will cover the following:
* The **Claim**;
* Any pre-issue applications;
* Any work ancillary to the **Claim**, such as watching briefs in tribunals other than the civil courts;
* Any appeal brought by the **Opponent**;
* Any appeal the **Lay** **Client** makes against an interim order;
* ADR (including mediation) relating to the **Claim**; and
* Assisting with the detailed assessment of the costs of the **Claim**, including (in so far as they relate to **Counsel’s** **fees**) negotiations relating thereto, but not including representing the **Lay Client** on any assessment.
  1. Unless it is agreed otherwise (such agreement being capable of being inferred by conduct), the conditional fee agreement created by this Agreement does not cover:
* Any proceedings taken by or against the **Lay** **Client** to enforce a judgment, order or agreement;
* Any **Counterclaim** made by the **Lay** **Client** (but see below);
* Any Part 20 claim the **Lay** **Client** may make or that may be made against the **Lay** **Client** (but see below); and
* Any appeal the **Lay** **Client** make against the final judgment order.
  1. For the avoidance of doubt, where **Counsel** carries out work which is not covered by the conditional fee agreement created by this **Agreement**, the costs associated with that work (including **Expenses**) will be payable on the terms set out under the heading ‘Fees for work not incurred under the conditional fee agreement created by this Agreement’.
  2. One of the two following provisions will apply according to what is set out in the **Schedule**; if both options have been left blank, then the first will apply be default:
* **Retrospective provision:** The conditional fee agreement created by this **Agreement** covers all work carried out since the date on which **Counsel** (including **Primary** **Counsel**) was first instructed in the **Claim** or otherwise carried out any work in the **Claim**. Unless **Counsel** have agreed otherwise (and subject to what is set out below), this **Agreement** replaces any previously-made conditional fee agreement or other retainer that the parties may have had concerning **Counsel’s** remuneration, and it does so as if this **Agreement** had applied from the time **Counsel** was first instructed. This, however, assumes that the retainer created by this **Agreement** is enforceable; if this is not the case, and if counsel so elects, the original agreement(s) or retainer(s) shall survive and continue to have effect as if this **Agreement** had never been made.
* **No retrospective provision:** The scope of the conditional fee agreement created by this **Agreement** is limited to work done from the **Agreement** **Date**. **Counsel’s** fees for any and all work carried out before that date are payable in accordance with the provisions under the heading ‘Fees for work not incurred under the conditional fee agreement created by this Agreement’ (see below).

1. **Paying for Legal Services provided by Counsel**

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

* 1. **Type One Agreement**
     1. If the **Claim** is **Lost**, only **Expenses** will be payable; unless they have already become due by reason of previous **Interim** **Hearing**, there will be no liability for **Counsel’s** **Ordinary** **Fees** and there will be no **Success** **Fee**. If the **Claim** is **Won**, then the provisions set out generally in this Agreement will apply.
  2. **Type Two Agreement**
     1. If the **Claim** is **Lost**, only **Expenses** will be payable; unless those fees have become due by reason of an award of costs made at a previous Interim Hearing, there will be no liability for **Counsel’s** **Ordinary** **Fees** and there will be no liability for a **Success** **Fee**. If the **Claim** is **Won**, then the provisions set out generally in this **Agreement** will apply.
     2. If a **Part** **36** **offer** has been made and not accepted and if the court awards the **Lay** **Client** costs as a result of that offer having been made and not accepted, the **Success** **Fee** and **Ordinary** **Fees** will be payable from 21 days after the offer in question was made. If, during the relevant period, the court award the **Lay** **Client** only part of the **Lay** **Client’s** costs, then the **Ordinary** **Fees** and **Success** **Fee** will be payable, but they will be reduced in a way that is proportionate to the reduction imposed by the court.
  3. **Type Three Agreement**
     1. Unless this Agreement ends as a result of the **Lay** **Client** and/or the **Professional** **Client** having failed to discharge their obligations under “The Lay Client’s Responsibilities” and/or “the Professional Client’s Responsibilities”, **Counsel** agrees not to pursue the **Professional** **Client** for any of their fees beyond those which are recovered from the **Opponent**; the **Professional** **Client** will remain liable for all of **Counsel’s** fees in the event of a **Win** , but **Counsel** agrees that they may enforce their liability in this regard only by pursuing the **Opponent** for those fees or by causing the **Professional** **Client** (or other person) to pursue the **Opponent** for those fees. In this regard, The **Professional** **Client** irrevocably agrees to pursue the **Opponent** for those fees in the name of the **Lay** **Client** and the **Lay** **Client** irrevocably agrees to permit the **Professional** **Client** to do so; all reasonable efforts must be made in this regard.
     2. **Expenses** are not included within the provisions mentioned above; they are payable regardless of whether they are not recovered from the **Opponent**.
  4. **Type Four Agreement**
     1. There is no Type Four Agreement for Defendant claims.
  5. **Type Five Agreement**
     1. If the **Claim** is **Lost**, **Counsel** will be paid **Discounted** **Fees** and **Expenses** (in full). If, however, this **Agreement** ends as a result of the **Lay** **Client** and/or the **Professional** **Client** having failed to discharge their obligations under “The Lay Client’s Responsibilities” and/or “the Professional Client’s Responsibilities” **Ordinary** **Fees** will be payable immediately together with a **Success** **Fee** if the **Lay** **Client** then goes on to **Win** the **Claim**. If the **Claim** is **Won**, then the provisions set out generally in this **Agreement** will apply.
     2. If a **Part** **36** **offer** has been made and not accepted and if the court awards the **Lay** **Client** costs as a result of that offer having been made and not accepted, the **Success** **Fee** and **Ordinary** **Fees** will be payable from 21 days after the offer in question was made. If, during the relevant period, the court award the **Lay** **Client** only part of the **Lay** **Client’s** costs, then the **Ordinary** **Fees** and **Success** **Fee** will be payable, but they will be reduced in a way that is proportionate to the reduction imposed by the court.
  6. **All Types of Agreement: General Provisions**
     1. Subject to the relevant provisions set out above, if the **Lay** **Client** **Wins** the **Claim**, the **Professional** **Client** will be liable for **Counsel’s** **Ordinary** **Fees**, **Expenses**, and **Success** Fee. Subject to the provisions in the **Schedule**, that liability will exist regardless of whether the **Professional** **Client** has been put in funds.
     2. If any monies become payable during the lifetime of the **Claim**, those monies may (and upon request by the **Professional** C**li**ent, will) be invoiced at any time after they become payable. Fee notes for those monies will be payable upon receipt regardless of the outcome of the **Claim**.
     3. If this **Agreement** ends as a result of the **Lay** **Client** and/or the **Professional** **Client** having failed to discharge the obligations under “The Lay Client’s Responsibilities” and/or “the Professional Client’s Responsibilities”, the **Professional** **Client** will be liable to pay **Ordinary** **Fees** and **Expenses** in full; if the **Lay** Client **then** goes on to **Win** the **Claim**, the **Professional** **Client** will also pay a **Success** **Fee**.
     4. If on the way to **Winning** or **Losing** the **Claim** the **Lay** **Client** is awarded costs at an **Interim** **Hearing**, then (subject to the provisions set out above and to the provisions in the **Qualifications** and **Conditions**, **Counsel** is entitled to immediate payment of **Ordinary** **Fees** and **Expenses** relating to that hearing. If the Lay Client subsequently **Wins** overall, a **Success** **Fee** will, in addition, be payable.
     5. Where there is disagreement as to whether the **Claim** has been **Won**, the matter shall be referred to an independent barrister of not less than 10 years call who will decide the issue on the basis of written submissions; that barrister’s decision will be binding on the parties and will be final.

1. **The Success Fee**
   1. The Success Fee is payable only if this indicated in the Schedule. It is calculated in accordance with the provisions in the Schedule. It is calculated by multiplying the **Percentage** **Increase** by the **Ordinary** **Fees**.
   2. The **Success** **Fee** cannot be more than 100 percent of the **Ordinary** **Fees**; if for whatever reason it is claimed a rate which exceeds 100 percent, it shall be deemed to be specified as being 100 percent as if that figure had been written into this Agreement *ab initio*.
2. **Ordinary Fees**
   1. Ordinary Fees are the equivalent of the fees that **Counsel** would have charged had this matter not been funded by way of a conditional fee agreement. The details are set out in the Schedule. Unless otherwise agreed, a refresher will be payable for any court hearing which is a second or subsequent day of a hearing, but if there is a gap of more than two weeks between the days of such a hearing, **Counsel** will be entitled to negotiate a higher fee. If the court hearing lasts less than 2 hours 30 minutes, two thirds of the refresher is payable (unless some other fee has been agreed).
   2. If any part of the **Schedule** has been left blank, counsel will be entitled to payment of a reasonable fee to be assessed in a way that is analogous to that set out in the Civil Procedure Rules 1998 for assessment of fees between solicitor and client.
   3. The rates of pay set out in the **Schedule** will apply from the **Agreement** **Date** (or, where appropriate, from the date of instruction) until the next review date. If, however, those rates are not reviewed for a period of 24 months, they will be deemed to have increased by a total of 6 percent (i.e., 3 percent per year).
3. **Fees for work not incurred under the conditional fee agreement created by this Agreement**
   1. Where work is (or has been) carried out beyond the ambit of the conditional fee agreement created by this **Agreement**, then the following provisions will apply:

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

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

1. **Reporting requirements and handling of costs**
   1. Unless **Counsel** has been paid in full for all work that has been carried out (regardless of whether a fee note has been rendered for that work), the **Professional** **Client** will under the following obligations:
   2. To use all reasonable skill and care and to take all reasonable steps to recover **Counsel’s** fees from the **Lay** **Client** and/or the **Opponent** (whichever is appropriate), and to do so as quickly as reasonably possible;
   3. To inform **Chambers** of the following events:

* The fact of and date of the definition of “**Win**” being met;
* The fact, date and terms of any costs order made in favour of the **Lay** **Client**;
* The fact of and date upon which any interim award of costs is made and/or received;
* The fact of and date upon which any payment on account of costs (whether by way of order or otherwise) is made;
* The fact and date upon which any Bill of Costs is served on behalf of the Lay Client (or if this has not been done following 3 months after the date on which the entitlement to costs arose, an explanation as to why this is the case);
* Where relevant to **Counsel** in anything other than a trivial way, the contents of any Points of Dispute;
* The fact and date upon which a request is made for a detailed assessment, and if no request for an interim costs certificate is made, the reasons why;
* The date upon which any detailed assessment hearing is due to take place and the outcome of that assessment; and
* The fact and date upon which any final or default costs order is made and/or any costs received.
  1. Any monies which are paid to **Professional** **Client** which either contain a contribution towards **Counsel’s** fees or which are paid for the purpose of discharging any costs debt arising out of **Counsel’s** fees (be that the sole purpose of payment or otherwise), will, to the extent that such monies can be said to relate to **Counsel’s** fees be held on express trust for **Counsel** from the moment that they are received.
  2. If the payment of or amount of **Counsel’s** fees or Expenses are in any way dependant on the monies recovered from the **Opponent**, then the **Professional** **Client** will inform **Counsel** of those negotiations and will ensure that **Counsel** is given reasonable opportunity (so far as practicable) to comment thereupon. Where any compromise is made in circumstances in which **Counsel** had not been given reasonable opportunity to comment and/or or in circumstances in which **Counsel** had not given approval of the proposed compromise (such approval not to be unreasonably withheld), then **Counsel** will be entitled to and will be paid those monies that would have been payable had his reasonable fees and Expenses been recovered in full from the **Opponent**. (It is recorded that it is the **Professional** **Client’s** responsibility to ensure that he is able to exercise sufficient control of the **Lay** **Client** to avoid the **Lay** **Client** unreasonably accepting or making offers against legal advice.)

1. **Interest**
   1. Where **Counsel’s** fees ought, under the terms of this **Agreement**, to have been paid, then interest will begin to run from the 31st day after payment, such interest being calculated at a rate of 8 percent per annum, or such other rate as may be set out in correspondence. Where interest is recovered from the **Opponent** which covers the period of non-payment (including the first 31 days) and where this is at a rate that exceeds 8 percent, then the provisions immediately below will, with the necessary changes, apply to the period in question.
   2. Where interest on costs is recovered from the **Opponent**, then (to the extent that **Counsel’s** fees were unpaid at the material time) **Counsel** will be entitled to a proportionate share of that interest, that proportion being based on the sums reasonable claimed during the period in question. This provision will apply regardless of whether **Counsel** is otherwise entitled to interest. To the extent that the law requires such a provision for the purposes of satisfying the indemnity principle, the **Professional** **Client** agrees that such monies are payable by him on behalf of the Lay **Client** as if those monies were part of Counsel’s fees generally.
   3. Notwithstanding the provisions below, where the Professional Client holds any monies on trust for **Counsel** and where, without good reason, those monies are not paid to **Counsel** within 14 days of receipt by the **Professional** **Client**, **Counsel** will entitled to punitive interest at a rate of 1.25 percent per month, compounded at monthly rests.
   4. For the avoidance of doubt, if this **Agreement** is a **Type** **Three** **Agreement**, interest between the **Professional** **Client** and **Counsel** will begin to run only from the date of receipt of the monies in question from the **Opponent**.
   5. Where **Counsel** has agreed to adjust his fees to take account of the monies recovered from the **Opponent**, or where he has agreed to postpone negotiations about payment until after such monies are received, **Counsel** will be entitled to interest only after having given written notice of his intention to do so. Unless exceptional circumstances exist (such as the sums in question being unusually large), such notice may not be given any sooner than 6 months after the relevant entitlement to costs arose. Where such notice is given, then a reasonable rate of interest will be payable, which, in default of agreement to the contrary, will be 1.5 percent above LIBOR.
2. **Other points**
   1. This Agreement incorporates the **Qualifications and Conditions** (see below); where this **Agreement** makes provisions which are different from or incompatible with the provisions in the **Qualifications and Conditions**, this **Agreement** shall prevail.
   2. This **Agreement** is governed by the law of England and Wales. Any disputes must be litigated there.
   3. The description of the **Claim** as set out above is for recognition purposes only and does not in any way limit the ambit of this Agreement; the ambit of the retainer shall be taken to include all matters that the parties understood to be the subject of the **Claim**. That ambit may change from time-to-time as the **Claim** progresses. In particular, if an opponent is incorrectly described or if more opponents are joined after this **Agreement** was first made, the ambit of this **Agreement** will not be in any way limited by the fact that the description of the **Claim** as set out above may not be wholly accurate and complete.
   4. In the event that any term or condition or provision of this **Agreement** is held to be a violation of any applicable law or statute or regulation, the same shall be deemed to be deleted from this **Agreement** and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term and condition or provision had not originally been contained in this **Agreement**.
   5. To be effective (and unless the court orders otherwise), any variation of or supplement to this **Agreement** must be made in writing.
   6. It is recorded that prior to signing this **Agreement**, the Professional **Client** explained the following to the **Lay** **Client**:

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

**Qualifications and Conditions**

1. **Value added tax (VAT): Counsel** adds VAT to both his fees and (where appropriate) **Expenses**. Where the law permits, **Counsel** has the right to elect the rate of VAT which will apply; subject to the law saying otherwise, **Counsel’s** election will be absolute and not capable of challenge.
2. **Currency:** Save for **Expenses** charged in other currencies, **Counsel’s** fees will be rendered and are payable in pounds sterling. If **Counsel** receives payment in any currency other than pounds sterling he will convert such currency at the exchange rate published by the Royal Bank of Scotland plc on the date payment is received; any shortfall on conversion and the costs of conversion to pounds sterling are payable by the **Professional** **Client** in addition to the amount of the fees or **Expenses**.
3. **The Lay Client’s responsibilities:** The **Lay** **Client** is expected to:

* give instructions (and to continue to give instructions) that allow **Counsel** and the **Professional** **Client** to do their work properly;
* not ask **Counsel** to work in an improper or unreasonable way;
* not deliberately mislead **Counsel** or the **Professional** **Client**;
* not unreasonably reject **Counsel’s** advice;
* cooperate with **Counsel** and **Professional** **Client**; and
* attend any expert examination or court hearing which he has been asked to attend.

1. **The Professional Client’s responsibilities:** The **Professional** **Client** must:

* give instructions (and to continue to give instructions) that allow Counsel to do his work properly;
* not ask Counsel to work in an improper or unreasonable way;
* not deliberately mislead Counsel;
* cooperate with Counsel;
* not unreasonably reject Counsel’s advice; and
* where it is accepted, take all reasonable steps to ensure that Counsel’s advice is put into effect; and
* Not do anything that might impair Counsel’s ability to be paid.

1. **What happens when this Agreement ends before the Claim ends?**

*(a) Paying Counsel if the Lay Client and/or the Professional Client ends this Agreement:* The **Lay** **Client** and/or **Professional** **Client** can end the **Agreement** at any time and for any reason. If this is done, the **Professional** **Client** must pay **Counsel’s** **Ordinary** **Fees** and **Expenses** **immediately** upon termination and in full; if the **Lay** **Client** goes on to **Win** the **Claim**, the **Professional** **Client** must also pay a **Success** **Fee**.

*(b) Paying Counsel if Counsel ends this Agreement (failure to meet obligations):* **Counsel** can end this **Agreement** if either the **Lay** **Client** or the **Professional** **Client** fail to abide by their responsibilities as set out above. If this happens, the **Professional** **Client** must pay **Ordinary** **Fees** and **Expenses** immediately upon termination and in full; if the **Lay** **Client** goes on to **Win** the **Claim**, the **Professional** **Client** must also pay a **Success** **Fee**.

(ii) *Paying Counsel if Counsel ends this Agreement (poor prospects of success):* **Counsel** can end this **Agreement** (at any stage) if he believes the **Lay** **Client** is unlikely to **Win** and/or if he believes the risks have materially changed since he made the risk assessment and set the **Success** **Fee**. If he ends the **Agreement** in these circumstances, the **Claim** will be regarded as having been **Lost** and the **Professional** **Client** will pay **Expenses** (and, where appropriate, **Discounted** **Fees**) accordingly; if the **Lay** **Client** goes on to **Win** the **Claim**, the **Professional** **Client** will also pay the **Ordinary** **Fees** (or, if **Discounted** **Fees** have been paid, the balance of **Ordinary** **Fees**), but **Counsel** will not be entitled to a **Success** **Fee**.

(iv) *Paying Counsel if Counsel ends this Agreement (rejection of advice):* **Counsel** can end this **Agreement** if the **Lay** **Client** rejects his advice about making a settlement with the **Opponent** (including advice about any **Part** **36** **Offer** or any other significant offer). If this happens, the **Professional** **Client** must pay **Ordinary** Fe**e**s and **Expenses** immediately upon termination and in full; if the **Lay** **Client** goes on to **Win** the **Claim**, the **Professional** **Client** must also pay a **Success** **Fee**.

1. **Assignment**

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

1. **Limitations**

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

Subject to the preceding clause, **Counsel** is not liable:

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

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

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

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

1. **Insolvency and successor practices**

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

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

1. **Loss of Capacity**

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