

SERJEANTS' INN CHAMBERS'
STANDARD TERMS & CONDITIONS FOR CONDITIONAL FEE AGREEMENTS
(Version 2, effective from 17 March 2014 onwards)
(incorporated into the Serjeants' Inn Chambers Short Form Conditional Fee Agreement)

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INTRODUCTION

1. Introduction

- (1) These standard terms will be incorporated into an agreement called a "*Short Form Conditional Fee Agreement*" [namely the version of Serjeants' Inn Chambers Short Form Conditional Fee Agreement for use Between Solicitors and Counsel applicable at the time it is signed by Counsel] which will be sent to the Solicitor in each case.
- (2) These conditions as incorporated into the Short Form Conditional Fee Agreement may be varied if, but only if, expressly agreed by Counsel or on Counsel's behalf by his/her clerk and the Solicitor in writing (including by exchange of e-mails).
- (3) Counsel's clerk does not have any authority to agree any variation on his/her behalf to Clause 24 '*Limitation of Liability*'.

2. Short Form Conditional Fee Agreement

The parties to the agreement and the work to be covered and the fees to be charged by Counsel in any particular case are defined in the Short Form Conditional Fee Agreement which will be sent to the Solicitors.

3. Binding Nature of the Agreement

- (1) Counsel will not be bound to act on a conditional fee basis

until he/she has completed and sent to the Solicitor the Short Form Conditional Fee Agreement.

- (2) Unless they specify otherwise, the delivery of the first instructions to Counsel in an individual case with a request that he/she undertake that case on a conditional fee basis shall constitute an offer to Counsel to undertake that case in accordance with these Standard Terms (details of which are published on Counsel's Chambers' website) with such a success fee between 0% and 100% as Counsel deems appropriate. The return of the Short Form Conditional Fee Agreement shall constitute acceptance by Counsel and a contract on these terms will bind the parties without the need for any signature by the solicitor or further communication.
- (3) In any other case where Counsel has been sent information or papers previously without such instructions so to act the return of the Short Form Conditional Agreement in response to a request so to act shall constitute a binding acceptance of a contract on these terms without the need for any signature by the solicitor or further communication.
- (4) Further, in any case where Counsel has already entered into a binding contract as above such terms and such agreement will, unless otherwise expressly agreed, automatically apply to any instructions which the solicitor may provide to any other barrister within Counsel's chambers who may be engaged during the proceedings with the agreement of Counsel and counsel's clerk to "stand in" for Counsel without the need for any further separate agreement other than exchange of email or post (for example under paragraph 5(1)(b) or 14 below) and in such circumstances a further agreement deemed to be in writing on these terms will be created between the solicitor and that other barrister notwithstanding the fact that administratively the solicitor may thereafter continue to provide only one set of reports and communications etc. to counsel via

Counsel's clerk on matters of fees.

- (5) The Solicitor agrees and considers reasonable the normal and the success fees set out by Counsel in the Short Form Conditional Fee Agreement unless the Solicitor challenges the fees within 14 days of receipt of the short form, in which case any new agreed fees will be recorded in hand writing on the short form.

OBLIGATIONS OF COUNSEL

4. Obligation of Counsel to act diligently

Counsel agrees to act in accordance with clause 8 of the Bar Council's (New) Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 which states:

- 8.1 *The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.*
- 8.2 *The Barrister will provide the Services by such date as may be agreed between the parties and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraph 701 of the Code.*
- 8.3 *The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.*
- 8.4 *The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.*

5. Inappropriate Instructions

Counsel is not bound to accept instructions:

- (1) to appear at any hearing where such instructions would be disproportionate to the nature of the hearing and where it would be reasonable
 - (a) for Counsel to consider that Counsel's fees would not be allowed on assessment; or
 - (b) for the Solicitor to instruct a barrister of lesser experience and seniority, (albeit that Counsel shall use his/her best endeavours to ensure that an appropriate barrister will act for the Lay Client on the same terms as this agreement);
- (2) to draft documents or advise if a barrister of similar seniority would not ordinarily be instructed so to do if not instructed on a conditional fee basis;
- (3) where Counsel's normal fees would be unlikely to be recovered at or as a result of any future assessment of fees (whether summary assessment, detailed assessment, as a result of a costs management or costs budgeting decision, or otherwise);
- (4) to undertake work which is outside the scope of this agreement.

OBLIGATIONS OF SOLICITOR

6. Obligations of the solicitor

The Solicitor agrees:

- (1) to comply with all the requirements of the Civil Procedure Rules ('CPR'), particularly Section II of Part 3 of the CPR and Practice Direction 3F (costs management), the Practice Directions about costs supplementing Parts 44 to 47 of the CPR (PD Costs), the relevant Pre-Action Protocol, and any Court Order relating to costs estimates, costs budgets and conditional fee agreements;
- (2) when instructing Counsel to undertake any work so as to assist the Lay Client, any Litigation Friend and/or the Solicitor in complying, or to enable them to comply with a deadline imposed by the CPR or a Court Order, to

notify Counsel and Counsel's clerk of the nature of that deadline and its date and to provide instructions to Counsel within a reasonable timescale prior to that deadline;

- (3) to make a prospective application to the Court for any extension of time necessary to comply with a deadline imposed by the CPR or a Court Order as soon as reasonably practicable after it becomes evident that such application is required;
- (4) promptly to apply for relief from sanction pursuant to CPR Part 3 if any default under the CPR occurs and promptly to notify Counsel of any such default;
- (5) to act diligently in all dealings with Counsel and the prosecution of the claim;
- (6) as soon as practicable and in any event no later than 28 days before the time required for filing and exchanging any costs budget (or comparable estimate of costs) in the proceedings to
 - (a) provide details to Counsel of, as the context requires, the tasks in respect of which he/she is likely to be instructed; and
 - (b) liaise with or consult Counsel about the likely amount of Counsel's input and fees;
- (7) before filing any estimate of costs or costs budget in the proceedings to
 - (a) provide details to Counsel of, as the context requires, the tasks in respect of which he/she is likely to be instructed;
 - (b) liaise with or consult Counsel about the likely amount of Counsel's input and fees; and
 - (c) provide a copy of any such estimate or costs budget to Counsel;
- (8) when filing a costs budget, not to include any estimate of Counsel's fees or hours that has not been agreed by Counsel or his/her clerk, unless they have provided no information to the Solicitor whereupon the Solicitor shall include his/her best estimate of Counsel's likely hours and fees;
- (9) to consult Counsel on the need for advice and action following
 - (a) the service of statements of case and if possible before the allocation decision;

- (b) the exchange of factual evidence; and
 - (c) the exchange of expert evidence;
- (10) to deliver within a reasonable time papers reasonably requested by Counsel for consideration;
- (11) promptly to bring to Counsel's attention:
- (a) any priority or equivalent report to insurers;
 - (b) any offer to settle, whether under CPR Part 36 or otherwise;
 - (c) any Payment into Court under CPR Part 36;
 - (d) any interim payment for or to the Lay Client on account of either damages or costs;
 - (e) any evidence, information or communication which may materially affect the merits of any issue in the case;
 - (f) any objections by the Opponent(s) to the hours and/or fees for Counsel estimated in the costs budget filed by the Solicitor;
 - (g) any costs management order and, if it results in revision downwards of the hours and/or fees for Counsel estimated in the costs budget filed by the Solicitor and previously supplied to Counsel, to draw the specifics thereof to Counsel's attention;
 - (h) any application by any party to have the Lay Client's costs capped;
 - (i) any costs capping order; and
 - (j) any other factor coming to the Solicitor's attention which may affect Counsel's entitlement to fees whether before or after the termination of this agreement;
- (12) promptly to communicate to the Lay Client and/or any Litigation Friend any advice by Counsel
- (a) to make, accept or reject any Part 36 or other offer;
 - (b) to accept or reject any Part 36 payment in;
 - (c) to incur, or not incur, expenditure in obtaining evidence or preparing the case;
 - (d) to instruct Leading Counsel or a more senior or specialised barrister;
 - (e) that the case, or a substantial issue in the case, is likely to be lost; and/or
 - (f) that damages and costs recoverable on success make it unreasonable, uneconomic or disproportionate for the action to

proceed;

- (13) promptly to inform Counsel's clerk of any listing for trial or any hearing;
- (14) to deliver the brief to Counsel in accordance with the Short Form Conditional Fee Agreement;
- (15) to inform Counsel promptly if the case concludes at any time before the date fixed for trial;
- (16) if any case management conference or costs management conference takes place in the absence of Counsel at which the Court proposes to make a costs management order or costs capping order, to make representations on Counsel's behalf in relation to his/her fees;
- (17) if instructing Counsel to appear at any case management conference or costs management conference at which the court proposes to make a costs management order or costs capping order, to brief him/her fully on the issues involved;
- (18) if any summary assessment of costs takes place in the absence of Counsel, to make representations on Counsel's behalf in relation to his/her fees;
- (19) to inform Counsel in writing within 2 days of any reduction of Counsel's fees on summary or provisional detailed assessment in the absence of Counsel and, in such a case, of any directions given under the Costs Practice Direction or alternatively to make application for such directions on Counsel's behalf;
- (20) where more than one Defendant is sued, the Solicitor will write to the "after the event" insurers clarifying whether and when the Defendants' costs are to be covered if the Claimant does not succeed or win against all of the Defendants, and send that correspondence to Counsel; and
- (21) when drawing up a costs bill at any stage of the case to include in it a claim for Counsel's fees and interest on Counsel's fees.

TERMINATION

7. Termination by Counsel

Counsel may terminate the agreement if:

- (1) Counsel discovers any fact or document which should have been disclosed to him and which materially affects Counsel's view of the likelihood of success and/or the amount of financial recovery in the event of success;
- (2) Counsel discovers that the Solicitor is in breach of any obligation in paragraph 6 hereof;
- (3) the Solicitor, Lay Client or any Litigation Friend rejects Counsel's advice in any respect set out in paragraph 6(12) hereof;
- (4) Counsel is informed or discovers the existence of any set-off or counter-claim which materially affects the likelihood of success and/or the amount of financial recovery in the event of success;
- (5) Counsel is informed or discovers the existence of information which has been falsified or should have been but has not been provided by the Solicitor, Lay Client or any Litigation Friend, of which Counsel was not aware and which Counsel could not reasonably have anticipated, which materially affects the merits of any substantial issue in the case;
- (6) Counsel is required or permitted to cease to act by provision in Part 2 of the BSB Handbook (The Code of Conduct); provided that Counsel may not terminate the agreement if so to do would be a breach of that Code;
- (7) a costs management (costs budgeting) order or costs capping order is made which Counsel reasonably believes may adversely affect the recoverability of his or her normal fees;
- (8) if the Opponent receives public funding from the Legal Aid Agency; or
- (9) if Counsel's professional indemnity insurer (whether the Bar Mutual Indemnity Fund or any 'top-up' insurer) ceases to provide indemnity for any liability that Counsel may have in damages under this contract to the Solicitor or to anyone else (including for the avoidance of doubt, the Client);

and notice of any termination must be communicated promptly in writing to the Solicitor.

8. Termination by the Solicitor

The Solicitor may terminate the agreement at any time on the instructions of the Lay Client or any Litigation Friend.

9. Automatic Termination

This agreement shall automatically terminate if:

- (1) Counsel accepts a full-time judicial appointment;
- (2) Counsel retires from practice;
- (3) the Solicitor's agreement with the Lay Client or any Litigation Friend is terminated before the conclusion of the case;
- (4) public funding from the Legal Aid Agency is granted to the Lay Client or any Litigation Friend;
- (5) the court makes a Group Litigation Order covering this claim.

10. Counsel taking Silk

If Counsel becomes Queen's Counsel during the course of the agreement then either party may terminate it provided he/she does so promptly in writing.

COUNSEL'S FEES AND EXPENSES

11. Errors and Indemnity for Fees

- (1) If, because of a breach by the Solicitor of his/her duty to the Lay Client, the Lay Client's claim is discontinued, dismissed or struck out in whole or in part:
 - (a) for non-compliance with an interlocutory order; or
 - (b) for want of prosecution, or

(c) for non-compliance with, or breach of, any rule of court or the Civil Procedure Rules, or a Practice Direction thereof;

(d) as a result of having failed to obtain relief from sanction for non-compliance with, or breach of, any rule of court or the Civil Procedure Rules, or a Practice Direction thereof;

or if the claim becomes unenforceable against the MIB for breach of the terms of the Uninsured Drivers Agreements or the Untraced Drivers Agreements: the Solicitor shall (subject to sub paragraphs (3) - (6) hereof) pay Counsel such normal fees as would have been recoverable under the Agreement to the date of discontinuance, dismissal or strike out.

(2) If, because of a breach by Counsel of his/her duty to the Lay Client, the Lay Client's claim is dismissed or struck out:

(a) for non-compliance with an interlocutory order; or

(b) for want of prosecution, or

(c) by rule of court or the Civil Procedure Rules

Counsel shall (subject to sub paragraphs (3) -(6) hereof) pay the Solicitor such basic costs as would have been recoverable from the Lay Client under the Solicitor's agreement with the Lay Client to the date of strike out.

(3) If, because of non-compliance by the Solicitor with the obligations under any of the sub-paragraphs of paragraph 6 above, Counsel's success fee is not payable by the Lay Client, then the Solicitor shall (subject to sub-paragraphs (5) to (7) hereof) pay Counsel such success fees as would have been recoverable under the Agreement (the Short Form Conditional Fee Agreement with these Standard Terms incorporated therein).

(4) No payment shall be made under sub paragraph (1), (2) or (3) hereof in respect of any non-negligent breach by the Solicitor or Counsel.

Adjudication on disagreement

(5) In the event of any disagreement as to whether there has been an actionable breach by either the Solicitor or Counsel, or as to the amount payable under sub paragraph (1), (2) or (3) hereof, that disagreement shall be referred to adjudication by a panel consisting of a Barrister nominated by PIBA (alternatively,

the PNBA) and a Solicitor nominated by APIL who shall be requested to resolve the issue on written representations and on the basis of a procedure laid down by agreement between PIBA and APIL (which shall follow the procedure in the Bar Council/Law Society Joint Tribunal Standing Orders published in June 2011 and available on the Bar Council's website).. The costs of such adjudication shall, unless otherwise ordered by the panel, be met by the unsuccessful party.

- (6) In the event of a panel being appointed pursuant to sub paragraph (5) hereof:
- (a) if that panel considers, after initial consideration of the disagreement, that there is a real risk that they may not be able to reach a unanimous decision, then the panel shall request APIL (where it is alleged that there has been an actionable breach by the Solicitor) or PIBA, alternatively the PNBA (where it is alleged that there has been an actionable breach by Counsel) to nominate a third member of the panel;
 - (b) that panel shall be entitled if it considers it reasonably necessary, to appoint a qualified costs draftsman, to be nominated by the President for the time being of the Law Society, to assist the panel;
 - (c) the Solicitor or Counsel alleged to be in breach of duty shall be entitled to argue that, on the basis of information reasonably available to both the Solicitor and Counsel, the claim would not have succeeded in any event. The panel shall resolve such issue on the balance of probabilities, and if satisfied that the claim would have been lost in any event shall not make any order for payment of fees or costs.

Cap

- (5) The amount payable in respect of any claim under paragraph 11(2) shall be limited to a maximum of £25,000.
- (6) Save as provided at paragraph 11(2), in no circumstances shall any liability that Counsel may have in damages for breach of duty under this contract whether to the Solicitor or to anyone else (including for the avoidance of doubt, the Lay Client and/or any Litigation Friend) exceed such liability (if any) as Counsel would have had to that person at common law in tort were no contract to exist.
- (7) Nothing in paragraph 11(8) shall operate so as to exclude liability where such

exclusion is prohibited by law nor to limit or exclude a contribution claim by the Solicitor against Counsel under the Civil Liability (Contribution) Act 1978.

COUNSEL'S ENTITLEMENT TO FEES

On Termination of the Agreement

12. Termination by Counsel, Solicitor or Automatic Termination

12.1 Termination by Counsel

- (1) If Counsel terminates the agreement under paragraph 7 then, subject to sub-paragraph 2 hereof, Counsel may elect either:
 - (a) to receive payment of normal fees without a success fee which the Solicitor shall pay not later than three months after termination: ("Option A"), or
 - (b) to await the outcome of the case and receive payment of normal and success fees if it ends in success: ("Option B").
- (2) If Counsel terminates the agreement because the Solicitor, Lay Client or Litigation Friend rejects advice under paragraph 6(12)(e) or 6(12)(f) Counsel is entitled only to "Option B".

12.2 Termination by the Solicitor

If the Solicitor terminates the agreement under paragraph 8, Counsel is entitled to elect between "**Option A**" and "**Option B**".

12.3 Automatic Termination and Counsel taking silk

If the agreement terminates under paragraphs 9 or 10, Counsel is entitled only to "**Option B**".

13. Challenge to fees

If the Lay Client or any Litigation Friend wishes to challenge:

- a) the entitlement to fees of Counsel or the level of such fees following termination of the agreement; or

b) any refusal by Counsel after signing this agreement to accept instructions, the Solicitor must make such challenge in writing within 14 days of termination or refusal.

14. Return of Work

If Counsel in accordance with Part 2 of the BSB Handbook (The Code of Conduct) is obliged or permitted to return any brief or instructions in this case to another barrister, then:

- (1) Counsel will use his/her best endeavours to ensure that an appropriate barrister agrees to act for the Lay Client or any Litigation Friend on the same terms as this agreement;
- (2) If Counsel is unable to secure an appropriate replacement barrister to act for the Lay Client or any Litigation Friend on the same terms as this agreement Counsel will not be responsible for any additional fee incurred by the Solicitor, Lay Client or any Litigation Friend.
- (3) If the case ends in success, Counsel's fees for work done shall be due and paid on the conditional fee basis contained in this agreement whether or not the replacement barrister acts on a conditional fee basis; but
- (4) If the Solicitor or Lay Client rejects any advice by the replacement barrister of the type described in paragraph 6(12) hereof, the Solicitor shall immediately notify Counsel who shall be entitled to terminate this agreement under paragraph 7(3).

ASSESSMENT AND PAYMENT OF COSTS / FEES

15. Costs Assessment - Interlocutory

If:

- (1) a costs order is anticipated or made in favour of the Lay Client at an interlocutory hearing and the costs are summarily assessed at the hearing; or
- (2) the costs of an interlocutory hearing are agreed between the parties in

favour of the Lay Client; or

- (3) an interlocutory order or agreement for costs to be assessed in detail and paid forthwith is made in favour of the Lay Client:

Then:

- (a) the Solicitor will include in the statement of costs a full claim for Counsel's normal fees; and
- (b) the Solicitor will promptly conclude by agreement or assessment the question of such costs; and
- (c) within 28 days of receipt of such costs the Solicitor will pay to Counsel the amount recovered in respect of his/her fees, such sum to be set off against Counsel's entitlement to normal fees by virtue of this agreement.

16. Interim Payment on Account of Costs and Interest

- (1) In the event that the Solicitor receives an interim payment from the Opponent on account of costs, the Solicitor shall pay to Counsel within 7 days of receipt thereof a sum on account of Counsel's fees, calculated pro rata in accordance with the proportion that Counsel's normal fees bear to the Solicitor's base costs (exclusive of disbursements and expenses) calculated to the date of the interim payment on account of costs.
- (2) The Solicitor will use his/her best endeavours to recover interest on Counsel's fees from any party ordered to pay costs to the Lay Client and shall pay Counsel the share of such interest that has accrued on Counsel's outstanding fees.

17. Costs assessment – Final

The Solicitor will:

- (1) inform Counsel's clerk in good time of any challenge made to his or her normal fees or success fees and of the date, place and time of any detailed costs assessment the Lay Client, any Litigation Friend or Opponent has taken out pursuant to the Civil Procedure Rules; and

- (2) provide Counsel with the opportunity to make written or oral representations in support of his/her fees at any assessment; and
- (3) place any relevant details and any written representations before the assessing judge and argue Counsel's case for his/her normal fee, at any inter partes assessment hearing, unless Counsel is present or represented.

18. Agreement on Fees with Opponent

If the Opponent offers to pay the Lay Client's and/or Litigation Friend's legal fees or makes an offer of one amount that includes payment of Counsel's normal fees at a lower sum than is due under this agreement then the Solicitor:

- (1) will calculate the proposed pro-rata reductions of the normal and success fees of both Solicitor and Counsel; and
- (2) inform Counsel of the offer and the calculations supporting the proposed pro-rata reductions referred to in paragraph (1) above; and
- (3) will not accept the offer without Counsel's express consent; and
- (4) will advise the Lay Client or any Litigation Friend on their liability for Counsel's unrecovered normal fees and success fees; and

if an agreement is reached on the fees recoverable from the Opponent, then unless it is expressly agreed by the Solicitor and Counsel that Counsel's fees shall be limited to the agreed sum, the Solicitor will be liable for Counsel's fees in accordance with paragraphs 8 and 11 of the Short Form Conditional Fee Agreement.

MISCELLANEOUS

19. Severance

If any provision of this agreement is found by any competent court to be invalid, illegal or unenforceable in whole or in part for whatever reason, then it shall be deemed to be severed from this agreement to the extent only of such invalidity, illegality or unenforceability and the remaining provisions of this agreement and the remainder of the provision in question shall continue in full force and effect unimpaired by such severance.

20. Jurisdiction

In the event of dispute, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute arising out of or under the terms of the agreement between Counsel and the Solicitor.

21. Trust

- (1) The Solicitor holds on trust for Counsel such part of the debt that the Lay Client owes the Solicitor as relates to Counsel's fees and, at Counsel's request, will assign the benefit of that debt to Counsel and do all such things as are necessary to perfect Counsel's title to that debt.
- (2) The Solicitor further holds on trust for Counsel any sum that he recovers from an Opponent in respect of Counsel's fees and agrees that he will hold such sums in a separate account until he pays it to Counsel.

22. Confidentiality

Counsel shall keep confidential all information provided to him in connection with the Claim unless:

- (1) Counsel is authorised by the Solicitor, the Lay Client or any Litigation Friend to disclose it;
- (2) the information is in or comes into the public domain without any breach of confidentiality on the part of Counsel; or
- (3) Counsel is required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Solicitor and/or the Lay Client and/or any Litigation Friend as much advance notice as possible and permitted of any such required disclosure.
- (4) Counsel owes the same duty of confidentiality to other clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other client, even if it is material to providing the Services.
- (5) Unless the Solicitor expressly informs Counsel to the contrary in advance in

writing, Counsel may allow the Instructions to be reviewed by another Counsel or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with this paragraph.

- (6) Subject to his obligation under this paragraph Counsel may make and retain copies of the Instructions and any written material produced by him.
- (7) To the extent such information is already in the public domain, Counsel may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Solicitor and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, Counsel may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and (where the law so requires) with the Lay Client's consent.

23. Intellectual Property Rights

- (1) All copyright and other intellectual property rights of whatever nature in or attaching to Counsel's work product, including all documents, reports, written advice or other materials provided by Counsel to the Solicitor, the Lay Client or the Litigation Friend belong to and remain with Counsel.
- (2) The Solicitor, the Lay Client and any Litigation Friend have the right and licence to use Counsel's work product for the particular Case and the particular purpose for which it is prepared.
- (3) If the Solicitor, the Lay Client or any Litigation Friend wishes to use copies of Counsel's work product for purposes other than those for which it is prepared and/or to store it in an internal know-how system or equivalent ("KH System"), this will require the express written permission of Counsel. Even if Counsel gives such permission, the following conditions shall automatically apply:
 - (a) Counsel's work product must be stored and managed in accordance with *"Use of Counsel's opinions – copyright and confidentiality"* published by The Law Society.
 - (b) Counsel accepts no duty of care, whether to the Solicitor or anyone

else, in relation to the use of Counsel's work product for purposes other than those for which it is prepared and/or as a result of its storage on the KH System.

- (c) The Solicitor agrees that Counsel shall have no liability of any kind (whether to the Solicitor or anyone else) arising out of or connected with the use of Counsel's work product for purposes other than those for which it is prepared and/or as a result of its storage on the KH System.
 - (d) The Solicitor agrees to indemnify Counsel against any loss which Counsel may suffer arising out of or connected with the use of Counsel's work product for purposes other than those for which it is prepared and/or as a result of its storage on the KH System.
- (4) The moral rights of Counsel in respect of his/her work product are asserted.
- (5) All copyright and other intellectual property rights of whatever nature in or attaching to the Solicitor's work product, including all documents, reports, written advice or other materials provided by the Solicitor to Counsel, the Lay Client or any Litigation Friend belong to and remain with the Solicitor. Counsel, the Lay Client and/or any Litigation Friend have the right and licence to use the Solicitor's work product for the particular case and the particular purpose for which it is prepared. If Counsel or the Lay Client or Litigation Friend wishes to use copies of the solicitor's work product for purposes other than those for which it is prepared, this will require the express written permission of the Solicitor. The moral rights of the Solicitor in respect of his work product are asserted.

24. Money Laundering

- (1) Notwithstanding acceptance of Instructions in accordance with paragraph 3 above, Counsel shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Solicitor will provide Counsel with all reasonable assistance to carry out

any necessary customer due diligence including (if required to do so) consenting to Counsel relying upon the Solicitor under Regulation 17 of the Money Laundering Regulations 2007.

- (2) In the event that Counsel reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability.

25. Limitation of Liability

25.1 Save for any negligent breach by Counsel of his/her duty to the Lay Client in the circumstances and with the consequences set out in paragraph 11(2), to which the cap on liability in paragraph 11(7) shall continue to apply:

- (1) In no circumstances shall any liability that Counsel may have in damages for breach of duty under this contract whether to the Solicitor or to anyone else (including for the avoidance of doubt, the Lay Client) exceed such liability (if any) as Counsel would have had to that person at common law in tort were no contract to exist.
- (2) Counsel is not liable
 - (a) for any loss or damage, howsoever suffered, by any person other than the Lay Client;
 - (b) for any loss or damage, howsoever suffered, which is caused by inaccurate, incomplete or late Instructions;
 - (c) for any indirect or consequential loss however suffered.

25.2 Nothing in paragraph 25.1 shall operate so as to exclude liability where such exclusion is prohibited by law.