



**DATED: .....**

**(1) KP LAW LIMITED**

**AND**

**CLIENT: .....**

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**RETAINER AGREEMENT  
(DAMAGES BASED AGREEMENT)**

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**THIS AGREEMENT** is made on: .....

**BETWEEN:**

- (1) KP Law Limited, the solicitors of 3 Hardman Square, Manchester M3 3EB ("**the Firm**").
- (2) You ..... (acting on behalf of [NAME] if applicable)) ("**you**" or the "**Client**")

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise provided:

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Adverse Costs"</b> | means that portion of the Defendant's fees and expenses that it has incurred in relation to the Proceedings that are ordered by the court or agreed between the parties to be paid by you to the Defendant or its Affiliates;                                                                                                                                                                                                                                                                                                              |
| <b>"Affiliate"</b>     | means in relation to a specified natural or legal 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 connection with, that specified person;                                                                                                                                                                                                                                                                                                            |
| <b>"ATE Insurance"</b> | means a contract of insurance between you and the ATE Insurer to cover certain liabilities of yours in respect of the Claim, including Adverse Costs and certain Expenses;                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"ATE Insurer"</b>   | means such provider of after-the-event insurance approved by the Firm;                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Claim"</b>         | means each and every claim that you as the claimant may seek to assert against the Defendants, arising out of or related to impairment or illness caused by or related to your use of 3M Combat Arms Ear Plugs and includes any and all statutory, legal or equitable cause or causes of action, whether to be made in England and Wales, or any other jurisdiction, that are or may be vested in the claimants against the Defendants or any other person, arising out of or related to your use of the Defendants' Combat Arms Ear Plugs |
| <b>"Damages"</b>       | means any and all amounts of money or the value of any goods, services or benefits, recovered or received by you as a result of Success in the Proceedings                                                                                                                                                                                                                                                                                                                                                                                 |

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|                          | (including any Settlement), and shall include statutory and other interest and be the gross amount prior to any set-off other than within the Proceedings or counterclaim exercised by the Defendant or prior to any deduction for taxes. Damages shall exclude Recovered Costs;                                                                  |
| <b>"DBA"</b>             | means a Damages Based Agreement under section 58AA(4)(c) of the Courts and Legal Services Act 1990 and the DBA Regulations. DBAs are a form of agreement for legal services under which the legal fees are calculated as a percentage of the Damages;                                                                                             |
| <b>"DBA Payment"</b>     | means the amount (excluding any Expenses) that you are liable to pay the Firm in the event of Success in the Proceedings in accordance with regulation 4(2) of the DBA Regulations and calculated in accordance with clause 8.1;                                                                                                                  |
| <b>"DBA Regulations"</b> | means the Damages-Based Agreements Regulations 2013;                                                                                                                                                                                                                                                                                              |
| <b>"Defendants"</b>      | means 3M Company, its Affiliates and any other party against whom you seek Damages in the Claim or in claims heard with the Claim or any one or more of them                                                                                                                                                                                      |
| <b>"Expenses"</b>        | means any disbursements that are incurred in connection with the Proceedings within the meaning of "expenses" in the DBA Regulations. For the avoidance of doubt, Expenses do not include the Firm's Fees or any fees payable to Counsel instructed on your behalf (the <b>"Counsel Fees"</b> );                                                  |
| <b>"Firm's Fees"</b>     | means the legal fees the Firm would charge, to represent you under a time-based retainer applying our respective hourly billing rates as set out in Schedule 2. Firm's Fees are utilised for the purpose of calculating and seeking recovery of our legal fees from the Defendant by way of Recovered Costs and calculating termination payments; |
| <b>"Percentage"</b>      | means the percentage of relevant Damages applied to calculate the DBA Payment as provided for in clause 8.1.2;                                                                                                                                                                                                                                    |

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|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Proceedings"</b>                        | means any legal proceedings, mediation or other steps taken in contemplation of such legal proceedings or mediation issued by or taken over by you in relation to the Claim, including all forms of alternative dispute resolution and whether proposed to be conducted in England and Wales or in any other jurisdiction;                                                                                                                                                                                                                                                                                               |
| <b>"Recovered Costs"</b>                    | <p>means all amounts paid or payable to you, or any person on your behalf, by the Defendant (or any related party) on account of:</p> <ul style="list-style-type: none"> <li>(a) the Firm's Fees;</li> <li>(b) Expenses;</li> <li>(c) Counsel's Fees,</li> </ul> <p>or, if a Settlement is agreed that fails to allocate the amount of the Settlement or compromise to such items, an amount equal to an order for Recovered Costs that a court might reasonably have been expected to make in the Claim as determined by the Firm, acting reasonably, or by an experienced costs lawyer agreed between the parties;</p> |
| <b>"Settlement"</b>                         | means an agreement between you and the Defendants or any Defendant, or their respective Affiliates, in settlement of the Claim, whether in the Proceedings or otherwise. This shall include any waiver or compromise of the Proceedings against a Defendant;                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Success in the Proceedings/Success"</b> | means your Claim is Finally decided in your favour, whether by a court decision or Settlement pursuant to which you make a recovery of Damages. <b>"Finally"</b> means that your opponent:-                                                                                                                                                                                                                                                                                                                                                                                                                              |

- (a) is not allowed to appeal against the court decision or Settlement;
- (b) has not appealed in time; and/or
- (c) has lost any appeal; and

"VAT" means value-added tax.

## 2. INTRODUCTION

- 2.1 This Agreement sets out the basis on which the Firm is prepared to act for you in your Claim. This Agreement is a Contentious Business Agreement made in accordance with s.59 Solicitors Act 1974.
- 2.2 The Firm is prepared to act for you on the basis that it is paid a percentage of the Damages that you recover in the Claim. This form of remuneration is called a Damages Based Agreement. This Agreement includes the Damages Based Agreement terms. It also includes other important terms which you must read.
- 2.3 By choosing a Damages Based Agreement you may end up paying the Firm more than if the Firm had charged you an hourly rate for the work done. This could happen if your Claim settles quickly and/or if the Damages recovered are higher than initially estimated. If the Claim does not settle quickly you may end up paying us less than the equivalent of a fee based on the time we actually spend on the case. However, if your Claim is not a Success, then you will not have to pay the Firm for the work it does on the Claim.
- 2.4 The Firm agrees to act for you under this Agreement in your Claim once you have signed a copy of this Agreement. We will also then usually sign and date this Agreement, however our signature to this Agreement is not a precondition to the Agreement taking effect.
- 2.5 The Firm will be your solicitors and together with the barristers instructed on your behalf ("**Counsel Team**") will represent you throughout the whole legal process including going to trial if necessary subject to the terms of this Agreement and their professional duties.
- 2.6 You acknowledge that the Firm is entering into this Agreement in reliance of the representations and warranties set out in Schedule 1 to this Agreement.

## 3. SCOPE OF THIS AGREEMENT

- 3.1 This Agreement covers the Claim and any similar or related Claim only, including:
  - 3.1.1 any pre-action application(s);
  - 3.1.2 any steps taken to enforce a judgment, order or agreement;
  - 3.1.3 any Settlement discussions and/or alternative dispute resolution mechanisms;
  - 3.1.4 any appeal by you or any other party against an interim (but not a final) order, provided the firm has not advised you against bringing or opposing that appeal, as the case may be; and
  - 3.1.5 any negotiations about, and any court assessment of, the costs of the Claim.
- 3.2 This Agreement will include any Claim against any other person who is subsequently identified as a necessary Defendant to the Claim.
- 3.3 Subject to any agreed written variation to this Agreement, this Agreement does not cover:

- 3.3.1 applications for permissions to appeal by you or any other parties or any appeal by you or any other party against a final order. Where we are instructed in relation to an appeal against a final order (or an interim order where the firm has advised you against bringing or opposing that appeal but you have instructed us to do so in any event) it is understood between the parties that any such appeal may be conducted pursuant to new funding terms and, if this is the case, this will be discussed with you at that stage;
- 3.3.2 any counterclaim;
- 3.3.3 any other claim brought by a Defendant by way of set off against the Claim.

#### **4. THE FIRM'S RESPONSIBILITIES**

- 4.1 The Firm must always act in your best interests, subject to its duty to the court and/or its other professional duties. The Firm and the Counsel Team will advise you of any legal issues, circumstances, and reasonably foreseeable risks relevant to the Claim and keep you apprised of progress and seek your instructions as required.
- 4.2 The Firm is authorised to conduct litigation under the Legal Services Act 2007 and it is the Firm that will provide all and necessary services it is authorised to provide to you in the conduct of the Claim.
- 4.3 The Firm is a company incorporated in England and Wales with registered number 11937792 and registered office at 81 Chancery Lane, London, WC2A 1DD. The Firm uses the term 'partner' to refer to a director of the Firm or an employee or consultant with equivalent standing and qualifications.
- 4.4 The Firm is authorised and regulated by the Solicitors Regulation Authority (SRA). The SRA is the independent regulatory arm of the Law Society of England and Wales, our professional body. The Firm and our solicitors are governed by Codes of Conduct and other professional rules, which you can access on the SRA's website at [www.sra.org.uk](http://www.sra.org.uk) or by calling 0370 606 2555.
- 4.5 The Firm's SRA authorisation number is 661050. All services provided by the Firm are regulated by the SRA.

#### **5. YOUR RESPONSIBILITIES**

- 5.1 To enable the Firm and Counsel Team to properly advise and represent you, you acknowledge the need to provide the Firm with clear, accurate and complete information in a timely manner when requested, to inform the Firm of all material facts about the Claim of which you are aware and the need to co-operate with the Firm and keep the Firm informed of any developments relevant to their representation of you in relation to the Claim.
- 5.2 By entering into this Agreement, you agree to:-
  - 5.2.1 provide the Firm with all information and documents which are relevant to the Claim, including but not limited to letters, documents and e-mails; medical records; and third-party reports and records; governmental filings, and to update the Firm about changes to such information timeously. If necessary, the Firm will ask you to provide written authorisation to obtain this information.
  - 5.2.2 comply with the Terms of the "Claimant Instruction and Management Agreement" attached hereto at Schedule 5 hereto.
  - 5.2.3 instruct the Firm to secure After the Event insurance on your behalf.
  - 5.2.4 safeguard and preserve any relevant documents (both electronic and hard copy) that may

be relevant to the Claim;

- 5.2.5 not ask the Firm to work in any way that is improper or unreasonable;
- 5.2.6 tell the Firm promptly if any information that you have previously provided is no longer true or accurate;
- 5.2.7 listen carefully to the Firm's advice and act reasonably and commercially during the Proceedings;
- 5.2.8 take all steps reasonably required to demonstrate you will satisfy any liability for Adverse Costs and Expenses either from your own funds or by the ATE Insurance;
- 5.2.9 if you are acting in the capacity of a Personal Representative you will obtain a grant of probate or letters of authority (as required) and provide this to the Firm.
- 5.2.10 consult with the Firm before making any contact with or having any discussion or correspondence with the Defendant or its lawyers concerning any aspect of this Claim;
- 5.2.11 not abandon or discontinue the Proceedings or any part of the Proceedings against the advice of the Firm;
- 5.2.12 with the Firm's guidance, take all reasonable steps to engage constructively with the Defendant to resolve the Claim, including through mediation if appropriate and notify the Firm immediately if you receive an offer of Settlement, orally or in writing, from or on behalf of the Defendant, and the details thereof;
- 5.2.13 not settle your Claim (or any part of it) without the written consent of the Firm, such consent not to be unreasonably withheld, having regard to their duty to act in your best interests;
- 5.2.14 not cause or contribute to a conflict of interest arising that would prevent the Firm from continuing to act in this Claim;
- 5.2.15 go to a court hearing if requested and co-operate generally with the Firm in the conduct of the Claim;
- 5.2.16 not enter into any agreement, orally or in writing, with any other person in respect of the Claim (including any agreement relating to a sharing of Damages);
- 5.2.17 not enter into any new agreement concerning the Claim that does not acknowledge the enforceability of this contract and the rights of the Firm;
- 5.2.18 make prompt and full disclosure in writing if you become aware of any facts that would have been disclosable to the Firm under Schedule 1 (*Representations and Warranties*);
- 5.2.19 not create a charge over the Damages in favour of any other person;
- 5.2.20 not create any future interest in the Damages that would have priority over the respective interests of the Firm; and
- 5.2.21 not to receive any payment directly from the Defendant or any other person in respect of Damages or Recovered Costs and ensure that all Damages and Recovered Costs are paid directly into a third party managed account.

- 5.3 In group litigation, it is not usually possible for solicitors to take instructions from each individual

client about how best to conduct their claims. In such a case, you therefore authorise the Firm to take all the steps it considers appropriate to best conduct your Claim, including (but not limited to):

- 5.3.1 deciding what types of legal claims to pursue on your behalf and how best to put these forward;
- 5.3.2 making strategic decisions on how best to progress the Claim, including decisions regarding preliminary legal issues, lead Claims and appeals;
- 5.3.3 issuing legal proceedings where appropriate;
- 5.3.4 deciding what type of generic evidence is needed and obtaining such evidence;
- 5.3.5 selecting and instructing appropriate barristers in your Claim;
- 5.3.6 selecting and instructing appropriate experts and filing and serving expert evidence;
- 5.3.7 agreeing case management directions and extensions of time with your opponent and seeking the court's resolution where appropriate;
- 5.3.8 making and defending interim applications where agreement with your opponent cannot be reached or where the court's permission or approval is required;
- 5.3.9 entering into Settlement negotiations or alternative dispute resolution with your opponent, and where appropriate, settling the Claims;
- 5.3.10 taking all steps to recover our costs from your opponent, including commencing detailed assessment proceedings and entering Settlement negotiations or alternative dispute resolution;
- 5.3.11 give consent on your behalf in the event that any member of the group is required to discontinue their Claim; and
- 5.3.12 instructing other solicitor's firms or groups of firms to carry out work on your behalf, if we consider appropriate.

6. You authorise the Firm, where it becomes necessary in the absolute discretion of the Firm, to establish a Claimant Representative Committee ("**Claimant Representative Committee**") comprising representatives of the claimant group to represent yours and the wider claimant group's interests. Such a Committee will have authority to bind you and the Claimant group in respect of the steps the Firm considers appropriate to best conduct your Claim. We will liaise with you further about that if and when such Committee becomes necessary.

6.1 Where exercising our authority under clause 5.3, the Firm will always act in the best interests of the majority of the group. If the best interests of the majority of the group differ from your best interests, we will advise you of this, but you agree that we may cease to act for you in these circumstances, in which case the payment terms in clause [12.1] below apply. Where possible we will refer you to alternative solicitors.

## 7. **ATE INSURANCE**

7.1 As a condition of the Firm's entry into this Agreement, you agree to instruct the Firm to obtain appropriate and suitable ATE Insurance from an ATE Insurer to meet any Adverse Costs and Expenses. If ATE insurance is not secured to the satisfaction of the Firm in its absolute discretion, it is free to terminate this Agreement.

7.2 The Firm is not authorised by the Financial Conduct Authority. However, the Firm is included on the register maintained by the Financial Conduct Authority so that the Firm can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register).

7.3 The premium for any policy of ATE insurance you take out is not recoverable from the Defendant in any circumstances and in the event of Success in the Proceedings will be payable by you in addition to the DBA Payment and our Expenses as set out below.

## **8. THE FIRM'S CHARGES**

### **8.1 The DBA Payment**

8.1.1 The Firm has agreed to charge you based on a Percentage of the Damages recovered by you as a result of Success in Proceedings. The total amount of this payment is called the DBA Payment. It is only payable if there is Success in the Proceedings.

8.1.2 The Percentage applied to calculate the DBA Payment will be **25%** inclusive of VAT (to the extent applicable), of the Damages you receive for pain, suffering and loss of amenity, and pecuniary loss other than future pecuniary loss in accordance with regulation 4(2) of the DBA Regulations.

8.1.3 The DBA Payment is reduced by the Firm's Fees and Counsel Fees that are paid or are payable by the Defendant or any of the Defendant's Affiliates in respect of your Claim, so that you only pay the DBA Payment net of those sums. The Firm is entitled to retain any Recovered Costs which are paid to you or to the Firm by the Defendant or any of the Defendant's Affiliates, including any element of the Recovered Costs which relates to the Firm's Fees or Counsel Fees.

8.1.4 The DBA Payment is only payable if your Claim results in Success. Accordingly, and for the avoidance of doubt, the DBA Payment is not payable unless your Claim results in Success.

#### **Expenses**

8.2 You will be liable for Expenses regardless of whether there is Success in the Proceedings. However, you will only be required to pay Expenses at the conclusion of the Proceedings if and to the extent that:

8.2.1 such Expenses have not been paid in full or are not payable by another party to the Proceedings by way of Recovered Costs; or

8.2.2 such Expenses have not been paid by the ATE Insurer under the terms of the ATE Insurance.

8.3 The Firm will fund certain Expenses during the course of the Proceedings and will be entitled to retain any part of any Recovered Costs payable on Success that relates to those Expenses by way of reimbursement. To the extent that the Expenses are not reimbursed by way of Recovered Costs or are not paid by the ATE insurer they shall remain payable by you we shall be entitled to deduct them from your Damages (including, where appropriate, your share of any Expenses incurred jointly with any other claimants).

8.4 If there is no Success in the Proceedings, your obligation with respect to those Expenses will, if applicable, be satisfied from the proceeds of the ATE Insurance and the ATE Insurer will pay those proceeds directly to the Firm.

- 8.5 The reasons for setting the DBA Payment at the level stated are set out in Schedule 3 hereto.
- 8.6 This agreement is a legally binding contract and, in so far as they apply to any part of this agreement, is made pursuant to and in compliance with s.58AA Courts & Legal Services Act 1990 and the DBA Regulations. To the extent that they apply, it is your and our mutual intention that the relevant terms of this agreement should at all times be construed so as to comply with the terms of s.58AA and the DBA Regulations.

#### **Group Litigation – Individual and Common Costs**

- 8.7 If the Claim is brought as part of a group of claimants, when seeking to recover costs from the Defendant, your notional liability for the Firm's Fees and your liability for the Counsel Fees will reflect work done and Counsel's Fees incurred on your individual Claim, and also a pro rata proportion in respect of work done and Counsel's Fees which are common to all of the claimants' claims ("common costs"). Subject to the court ordering otherwise, your (notional) pro rata share of the common costs will be in proportion to your pro rata share of the total Settlement sum or award received by the claimant group. If there is no Settlement sum or award, your pro rata share of the common costs will be equal to its estimated claim as a proportion of the total estimated claim of the claimant group.
- 8.8 Similarly, you will be liable for Expenses incurred on your individual Claim and also a pro rata proportion of the Expenses which are common to all of the claimants' claims.
- 8.9 Liability for any group ATE premium is likely to be shared by the group of successful claimants in accordance with the terms of the policy, or in accordance with any costs sharing agreement required by the Court and/or insurers, and/or as determined by the Court.
- 8.10 It may be necessary to make different costs sharing arrangements depending, for example, on how the court manages the proceedings in relation to your Claim. Where the Firm reasonably considers that this is necessary, you agree that the Firm may substitute such alternative costs sharing terms as are reasonable.

#### **If you Lose**

- 8.11 If there is no Success in the Proceedings, you will not be required to pay the DBA Payment. You will be required to pay Expenses which the Firm has funded and you are likely also to be ordered in principle to pay Adverse Costs to the Defendant in relation to your individual Claim and any common costs incurred by the Defendant. However, since your claim is a claim for damages for personal injury, a system known as Qualified One Way Costs Shifting ('QOCS') imposed by rules of court means that in practice you will not usually have to pay anything towards those costs unless the court has struck your case out or your case has been found to be fundamentally dishonest. In any event, ATE Insurance will be secured to provide cover for you in respect of Expenses and Adverse Costs. This means that you will only be required to pay Expenses and Adverse Costs to the extent that the ATE Insurer does not make payment under the ATE Insurance or such payments are not subject to QOCS.
- 8.12 The liability for adverse common costs shall be resolved on the basis that each Claimant shall be severally liable for an equitable, pro rata share of any costs awarded to the Defendants in respect of adverse common costs whether such costs are incurred before or after the date of this litigation.
- 8.13 In the event that any agreement in relation to adverse common costs with the Defendants or any order in relation to adverse common costs made by the court does not reflect the apportionment provided for above then the Claimants hereby agree that each shall indemnify the other to the extent necessary such that each Claimant's liability in respect of adverse common costs shall be as stated in clause 8.12 above.

8.14 Nothing in this Agreement is intended to give rise to or impose a joint or joint and several liability upon any Claimant in respect of Adverse Costs.

8.15 **Recovered Costs**

If during the course of the Claim an order for Recovered Costs is made in your favour (interim or otherwise), by agreement or court order, then the Firm may have to bring the existence of this Agreement to the attention of the court. There remains some uncertainty in law as to whether you would be permitted to enforce the payment of such Recovered Costs from the Defendant until the outcome of the Claim is known. If, on the way to winning or losing your claim you are awarded any costs, by Agreement or Court Order, then to the extent permitted by law we are entitled to payment of those costs at that point regardless of whether you win or lose overall. You agree that, in the event the court permits the recovery of an interim award for Recovered Costs that we may apply such costs in accordance with the court's ruling and/or alternatively on account of your liability to pay Expenses and/or the DBA Payment if you succeed overall. If you succeed overall credit will be given against the DBA Payment for any Firm's Fees or Counsel Fees received and against your liability for Expenses in respect of any Expenses received as part of the interim costs order or agreement.

8.16 **Settlement**

Where the Defendant makes an offer to settle the Claim for a lump sum or benefit that does not distinguish between Damages and the Firm's Fees, the Counsel Fees and Expenses, you agree that you will not accept such an offer without the written consent of the Firm. Where the Firm gives its consent, it will agree with you an appropriate apportionment of the lump sum so as to identify an appropriate and fair apportionment of notional Fees, Counsel Fees, Expenses and Damages, from which the DBA Payment can be calculated.

8.17 **Recovery**

If the sum actually received by you from the Defendant is not the amount the Defendant has agreed or has been ordered to pay, then you will use all reasonable endeavours to assist the Firm in recovering the money due and owing. This will include, but is not limited to, the right to take action in your name to enforce an order or agreement.

9. **APPLICATION OF PROCEEDS AND PAYMENT PRIORITY**

9.1 You hereby give instructions that all Damages and Recovered Costs are to be paid directly into a third party managed account. Subject to any subsequent agreement between any litigation funder and the Firm (at its discretion), following receipt of any Damages or Recovered Costs, the Firm will apply such amounts in the following order of priority:

9.1.1 Firstly, if applicable, to the ATE Insurer in respect of the premium due under the ATE Insurance;

9.1.2 Secondly, to the Firm in respect of Expenses which it has funded;

9.1.3 Thirdly, the balance of the DBA Payment having taken account of Recovered Costs, whereupon the Firm will also account to the Counsel Team for the Counsel Fees.

9.1.4 Lastly, to you in respect of the balance of the Damages.

9.2 If there is no Success in the Proceedings, you irrevocably instruct the Firm that any amounts recoverable under the ATE Insurance are to be paid directly into a third party managed account to be applied by the Firm as follows:

9.2.1 Firstly, to the Firm in respect of those Expenses paid for by the Firm; and

9.2.2 Secondly, to meet any other Expenses payable by you in accordance with the terms of this Agreement.

9.3 You agree to hold all Damages and Recovered Costs as trust property on bare trust absolutely for the benefit of the Firm, the Counsel Team, you, and the ATE Insurer to the extent of each of our respective interests in the Damages and Recovered Costs as described in this Agreement. You also agree to hold any proceeds from the ATE Insurance in respect of Expenses as trust property on bare trust absolutely for the benefit of the Firm.

## 10. **VAT**

10.1 The DBA Payment is inclusive of VAT, to the extent that VAT applies, as set out in clause 8.1.2.

10.2 The Firm is registered for VAT purposes. The Firm's VAT registration number is 329824182.

## 11. **BILLING ARRANGEMENTS AND YOUR RIGHTS IN RELATION TO OUR CHARGES**

11.1 You hereby give the Firm an irrevocable instruction that any Damages or Recovered Costs are to be paid directly into a third party managed account subject to the terms of this Agreement. We will apply all Damages and Recovered Costs in accordance with clause 9 (*Application of Proceeds and Payment Priority*). In the event that the amount of Recovered Costs is disputed by the Defendant we will defer from charging you that proportion of the amount of the DBA Payment which equates to the gross total of the Firm's Fees and Counsel Fees on a time-charge basis plus Expenses, until that cost dispute is resolved. A bill will be raised in respect of the balance of the DBA Payment which is not the subject of the costs dispute with the Defendant. Once the costs dispute with the Defendant has been resolved any further sum due as part of the DBA Payment will be payable and a bill in respect of the same will be raised.

11.2 The bill that we send you (or, in the event that the amount of Recovered Costs is disputed, the initial bill together with the subsequent bill that we send you in respect of the balance of the DBA payment, taken together and treated as both being delivered on the date of the later bill) will be a final statement of the sums payable by you pursuant to the terms of this Agreement. It will also be a statutory bill for the purpose of any determination of any rights you may have pursuant to the Solicitors Act 1974.

11.3 When we send you the bill or bills we will ask you to confirm your agreement to the amount of the bills and to our retaining the sums deducted from your damages as payment of the sums due pursuant to this Agreement, as set out in those bills. By entering into this Agreement you expressly agree that in the event that you do not raise any dispute in relation to such bill or bills within one calendar month of delivery then the amount of the bill shall be treated as having been agreed for the purposes of our retaining payment pursuant to the terms of this Agreement.

11.4 This Agreement is a Contentious Business Agreement. This Agreement does not provide for this firm to be remunerated by you by reference to an hourly rate (save in the event Clause 12.2.2 applies, which would be contrary to your and our present intentions for the conduct of your claim), but rather by way of the DBA Payment and payment of our Expenses (subject to the terms of this Agreement). This means that your rights to dispute the amount payable under this Agreement are as set out in ss. 59 to 61 Solicitors Act 1974. You have the right pursuant to those provisions to ask the Court to consider whether this Agreement is fair and reasonable in terms of the sums payable under it. Because this Agreement is a Contentious Business Agreement you do not have a right to seek an order pursuant to s.70 Solicitors Act 1974 for an assessment of our bills unless the Court determines that this Agreement is in any respect unfair or unreasonable, which we do not consider it to be. We

will provide reasonable further information as to your rights in this regard in response to any reasonable request.

11.5 You should be aware that if you wish to exercise any right you may have to dispute the sums payable under this Agreement in accordance with the Solicitors Act 1974, then any delay in doing so may result in those rights being affected or lost, in particular once any sums due under this Agreement have been paid by you by way of such sums being deducted from any Damages (as is provided for in this Agreement). Should you wish to dispute the amount payable under this Agreement you should usually do so promptly once your Claim concludes, though we ask that you raise any concerns you have in this regard with us in the first instance.

11.6 The Firm and you are beneficiaries of the trusts created under this Agreement. Any Damages, Recovered Costs and the proceeds of the ATE Insurance will be kept separate from your own funds, and will be dealt with by the Firm in accordance with this Agreement and the SRA Accounts Rules

### **Third Party Managed Account (TPMA)**

11.7 If your case concludes successfully, the Firm will use ShieldPay to pay any money to you. The Firm does this to ensure transparency, efficiency, and certainty for each transaction. You are not required to authorise payments, or to pay any fees and charges as a result of us using Shieldpay on your case. Any costs will be paid by the Firm.

When any money is received into Shieldpay that is owed to you, the Firm will send you an information sheet explaining how you can claim your money.

You will be contacted via email by Shieldpay who will request that you provide your bank account details via a secure portal. This will need to be an account in your name to be accepted.

Once Shieldpay have received the money, and verified your details, you will receive your money within 21 days.

11.8 At any time in the process, you are able to query the amount that you will receive as part of your settlement. You should contact the person responsible for dealing with your case to discuss this. It is always open to you to raise a formal complaint with the Firm, and you will not be charged for doing so.

11.9 You have the right to end the agreement to use Shieldpay. If you do wish to end this agreement, please contact the person responsible for dealing with your case. Please note that this may cause a delay in you receiving your money.

11.10 If you have any complaint about the Shieldpay process, you should contact Shieldpay directly – information about this is available on their website here: <https://resources.shieldpay.com/making-a-complaint>.

11.11 Shieldpay is authorised and regulated by the UK Financial Conduct Authority (FRN: 770210) under the Payment Services Regulations 2017. Shieldpay provides Third-Party-Managed Account solutions to law firms, financial institutions, and other regulated institutions and their clients. You are able to check this by searching the Financial Services Register: [www.fca.org.uk](http://www.fca.org.uk). Further information about Shieldpay is available on their website: [www.shieldpay.com](http://www.shieldpay.com).

The regulatory protections that applies to the Shieldpay account are different to those that apply to client money held in a firm's client account. They fall under Rules 11.1 and 11.2 of the SRA Accounts Rules.

## 12. TERMINATION

### 12.1 By you

- 12.1.1 Subject only to the cooling off period in Clause 12.3 below (if applicable), You are free to end the Firm's services before your case is completed by writing us a letter. If you do, you agree to immediately pay all Expenses incurred by the Firm. You also agree to pay the DBA Payment to the Firm if your Claim results in Success.
- 12.1.2 In the event that you end our relationship you agree to keep the Firm regularly informed of the progress of your Claim and you irrevocably agree to any new solicitor that you appoint providing the Firm with regular information on request as to the progress of your Claim and answering such reasonable queries as the Firm may raise on a timeous basis. You are obliged to immediately notify your new solicitors of the existence of this Agreement, notify the Firm in writing of any monies received, and to give irrevocable instructions to your new solicitors to hold the DBA Payment on trust for the Firm in a designated client account and give the Firm confirmation of the same.
- 12.1.3 You irrevocably agree that payment of the DBA Payment takes priority over any other payment obligations you may have under any additional funding agreement or DBA arising out of the same Claim and that the required portion of Damages and Recovered Costs shall be paid to the Firm to be applied in accordance with Clause 9 (*Application of Proceeds and Payment Priority*).
- 12.1.4 We would require you to sign a court form which tells the court we no longer act for you.
- 12.1.5 If you are an individual, this Agreement does not automatically end if you die before Your Claim is concluded. This Agreement will continue for the benefit of your estate and all your rights and obligations under this Agreement shall pass to your personal representatives. All references to 'you' under this Agreement shall be treated as references to your personal representatives save where the context otherwise requires.
- 12.1.6 If your personal representatives chose not to continue with your Claim or on behalf of the estate or any dependents you may have then the terms of Clause 12.1.1, 12.1.2, 12.1.3 and 12.1.4 shall apply.

### 12.2 By us

- 12.2.1 The Firm is free to withdraw its services at any time if it has good reason. For example, and without limitation, it may withdraw its services:
  - (a) if an ATE policy cannot be obtained on your behalf which the Firm, in its absolute discretion, regards as appropriate in the context of the Claim as a whole;
  - (b) if third-party funding for ongoing payment of Expenses and Counsel Fees cannot be obtained on terms acceptable to the Firm acting in its sole discretion;
  - (c) where you either have been or are in breach in a material respect of any of the warranties you have provided us in Schedule 1 (*Representations and Warranties*);
  - (d) if you do not keep to your responsibilities under this Agreement or become bankrupt or insolvent;
  - (e) where you are in breach in a material respect of your duty of confidentiality under

this Agreement;

- (f) if the Firm considers (in its absolute discretion) the Claim is unlikely to result in Success, or the likely recovery you would achieve is insufficient to justify further costs and Expenses; or
- (g) if you unreasonably reject our recommendation about making a Settlement with the Defendants or discontinuing part of your Claim.

12.2.2 If the Firm withdraws its services pursuant to clauses 12.2.1(c), 12.2.1(d), 12.2.1(e) or 12.2.1(g)), or for any other reason involving a breach of this Agreement by you, you agree to pay all Expenses incurred by the Firm and the Firm's Fees and Counsel Fees immediately on withdrawal.

12.2.3 If the Firm withdraws its services pursuant to clauses 12.2.1 (a), 12.2.1(b), 12.2.1(f) or for any other good reason not involving a breach of this Agreement on your part, you will have a liability for the Expenses and Counsel's Fees incurred up to the point of withdrawal of our services, save for those Expenses and/or Counsel Fees not covered by any ATE insurance or third party funding arrangements.

12.2.4 Where clause 12.2.2 applies, and you go on with your Claim and there is Success in the Proceedings, you agree to pay the DBA Payment in accordance with Clause 8.1 whereupon the Firm will give credit for any sums received pursuant to clause 12.2.2.

12.2.5 The Firm would also have to withdraw its services if it learned of a conflict of interest not captured by our own internal checks that would make it unethical for it to continue to act for you. If the Firm had to withdraw its services because of a conflict of interest, the consequences set out clause 12.2.3 will apply.

12.2.6 The Firm has no duty to find you other lawyers after the Firm withdraws its services. You must notify us of the name and address of any newly appointed lawyers and keep us advised of any Success in the Proceedings arising following withdrawal of our services.

### 12.3 **Cooling off period**

If you have a right to cancel this Agreement under Schedule 4 (*Notice of the Right to Cancel*) and if you do so within the 14-day time limit, you will pay nothing.

## 13. **CONFIDENTIALITY**

13.1 As your solicitors, the Firm will have to share relevant information about your case with the Defendant's lawyers and with the court. But unless the Firm needs to share this information as part of its work, all information you give the Firm will be kept confidential by your legal team.

13.2 Success in the Proceedings depends in part on you also keeping our exchanges confidential. You agree to not disclose any information about your Claim to a third party before discussing it with the Firm first. Confidential information includes this contract.

## 14. **DISPUTE RESOLUTION**

14.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination, or enforceability (including non- contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The parties agree to exclusively submit any such dispute to expert determination.

- 14.2 The parties shall agree on the appointment of an expert. In the absence of such agreement or the expiry of 30 days since the dispute arose, the parties shall ask the Chairman of the Bar Council to appoint an expert, and agree with the expert the terms of his appointment subject to the provisions of this clause. The expert shall be a King's Counsel who specialises in commercial disputes from one of the following chambers: Brick Court, Essex Court, 3 Verulam Buildings, Fountain Court, Blackstone, 4 Pump Court, Hardwicke or 4 New Square.
- 14.3 In so far as the dispute relates to Damages, the expert may appoint a chartered accountant to advise and assist the expert. All matters under this clause and the expert's decision shall be in the English language. The expert shall prepare and serve on the parties, within a maximum of 3 months of his appointment, a written decision briefly setting out his reasoning. The parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.
- 14.4 Subject to the above, the expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate and determine the timescales which shall apply to such procedures. The expert's written decision shall be final and binding on the parties in the absence of fraud or manifest error. Each party shall bear its own costs and the expert's fees and any expenses he properly incurs shall be borne by the parties equally or in such other proportions as the expert shall direct. All matters concerning the process and decision reached shall be kept confidential.
15. **PART 36 ADDITIONAL SUMS**
- 15.1 In accordance with the procedural rules that apply to claims of this type, if you make an offer, known as a Part 36 offer, and the Defendant does not accept that and at trial you obtain judgment for a sum at least as advantageous to you as your offer, the Court may award you an additional percentage of that judgment sum, known as an 'additional sum'. Such additional sums may be ordered in respect of damages or in respect of your costs (in detailed assessment proceedings). If an additional sum is awarded then;
- 15.1.1 If that additional sum is in respect of your Damages, the additional sum will be payable to you as an additional amount of Damages and shall form part of the Damages for the purposes of this Agreement;
- 15.1.2 If that additional sum is in respect of costs, you agree that the additional sum shall be paid to us. Credit will be given for that additional sum against any sums you are otherwise liable to pay us in accordance with the remaining terms of this Agreement such that, in practice, it will serve to reduce the amount of any sums you are liable to pay under this Agreement.
16. **UNUSUAL' COSTS AND RULE 46.9 OF THE CIVIL PROCEDURE RULES**
- 16.1 We do not consider the hourly rates set out in Schedule 2 to this Agreement (should they apply in any particular circumstance) or the Firm's Fees or Expenses for which it provides or which we anticipate incurring in this case to be unusual in nature or amount such that, as a result of their unusual nature, they may not be recovered from the Defendant. However, even if a court concludes to the contrary, by entering into this Agreement you confirm that You remain liable for such Firm's Fees and Expenses where they apply in accordance with this Agreement, even if not recovered from the Defendant as a result of them having been held to be unusual in nature or amount.
17. **S.74(3) SOLICITORS ACT 1974**

- 17.1 In the event that Your Claim proceeds in the County Court (as opposed to the High Court), or in any other circumstances in which s.74(3) Solicitors Act 1974 is said to apply, there are limits in certain circumstances on the maximum sums the Court may award against the Defendant by way of costs. These may include;
- 17.1.1 Some elements of costs where the maximum sum the Defendant can be ordered to pay is fixed by rules of procedure;
- 17.1.2 Some elements of costs – such as the DBA Payment and the ATE premium – where the law says that the Defendant cannot be ordered to pay those costs in any circumstances or that the basis on which you will be able to recover costs is different to that provided for under this Agreement.

- 17.2 By entering into this Agreement, You expressly agree that the sums which you are liable to pay under this Agreement remain payable regardless of any such limits that might apply in respect of the sums that could have been allowed against the Defendant in the County Court, subject only to the remaining terms of this Agreement. If you require any further information in relation to this please contact us.

## 18. **CONSUMER RIGHTS**

- 18.1 The services provided under this Agreement are legal services. The method of calculation of our charges for such services are as set out in this Agreement. It is not reasonably possible to calculate in advance the total price for those services, because the precise course of your Claim cannot be predicted at this stage and because the total payment is likely to depend on the level of Damages.
- 18.2 We are unlikely to be able to complete our services in respect of your claim within 30 days of this Agreement being made and the precise duration of your claim cannot be reasonably predicted. Details of conditions for termination of this Agreement, and the consequences of the same, are set out in this Agreement.
- 18.3 Details of our complaints policy are set out on our website: [www.kpl.co.uk/complaints](http://www.kpl.co.uk/complaints).
- 18.4 In dealing with your claim, we are bound to comply with the Solicitors Regulation Authority Code of Conduct. Details of the same may be found at <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>.
- 18.5 We are subject to the legal ombudsman scheme. Details of the same may be found at <https://www.legalombudsman.org.uk/>. You should note that there are strict time limits for bringing a complaint to the Legal Ombudsman and that a failure to complain to the Legal Ombudsman promptly after any particular event may result in the loss of the right to bring a complaint.

## 18.6 **SIGNING THIS AGREEMENT**

This Agreement contains the whole agreement between the parties about their relationship with each other and the Firm's charges and Expenses. It will not be changed unless you and the Firm agree, put in writing and sign any changes. It will legally bind anyone such as heirs or legal representatives, who replace the parties hereto.

## 19. **GENERAL PROVISION**

In the event that any term or condition or provision of this Agreement is deemed by any competent court or tribunal to be a violation of any applicable law or statute or regulation or to be invalid, illegal or unenforceable in whole or in part for whatever reason, the same shall be deemed to be deleted from the Agreement and shall be of no force and effect to the extent only of such invalidity, illegality

or unenforceability and this Agreement shall remain in full force and effect and effect as if such term, condition or provision had not originally been contained in this Agreement, and this Agreement shall be deemed amended in such manner to render it compliant with the applicable law, such that the DBA Payment remains payable from the Damages.

Tom Longstaff

Date: [Date]

Partner  
KP Law Limited

I have read this Agreement carefully and I agree with it.

[Name]

Date:

CLAIMANT

Address:

If signing in your capacity as Personal Representative of a deceased's estate, or if you are bringing this claim on behalf of another person in accordance with a Power of Attorney, please indicate on whose behalf the claim is brought:

Name:

## **SCHEDULE 1**

### **Representations and Warranties**

The Firm's decision to enter into this Agreement is based in part on the representations and warranties you have made about yourself in this Schedule 1. You agree to tell the Firm promptly if any of these statements are no longer true.

1. All factual information delivered by you to us in writing prior to the date of this contract was true and accurate in all material respects as at the date of the relevant report or document containing the information and remains true and accurate at the date of signing this contract.
2. No information has been withheld by you, or to the best of your knowledge by your affiliates or any advisors, that if disclosed would have the effect of causing the information, opinions, intentions, forecasts or projections previously provided being untrue or misleading in any material respect or which, if disclosed, might reasonably have been expected to affect the Firm's decision to enter into this Agreement.
3. All documents in your possession or control relevant to the Claim have been and will be preserved by you and will be supplied to the Firm.
4. There are no facts or situations that have not been disclosed to the Firm which might reasonably be expected in any material respect to adversely affect the conduct, progress or continuation of the Proceedings, your prospects of successfully enforcing any judgment in the Proceedings, or the prospects of Success in the Proceedings.
5. Other than this Agreement, there are no other agreements or understandings, whether in oral or written form, between you and any other person in respect of the Claim, Proceedings or Damages (including any agreement or understanding relating to the sharing of the Damages).
6. The obligations assumed by you under this Agreement are legal, valid, binding and enforceable obligations, subject only to applicable bankruptcy or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity.
7. The entry into and performance by you of this Agreement does not and will not conflict in any respect with, or result in a breach or violation of:
  - (a) any law or regulation applicable to you; or
  - (b) any agreement or instrument binding upon you or any of your assets.
8. No consent, approval, authorisation, filing with or order of any court or governmental agency or body is required to enable you lawfully to enter into, exercise your rights and comply with your obligations in this Agreement.
9. No legal proceeding or other procedure or step has been taken or, to your knowledge (having made all reasonable enquiries) threatened, by or in relation to you on the basis that you are unable to pay your debts.

## SCHEDULE 2

### Firm's Fees and Counsel Team's Fees

#### Firm's Fees

1. Firm's Fees are utilised for the purpose of calculating and seeking recovery of our legal fees from the Defendant by way of Recovered Costs and calculating termination payments in Clause 12.2.2 applies. The Firm's Fees as set out in this Schedule 2 do not ordinarily determine the sums payable by you under this Agreement.
2. The Firm's Fees will depend on which solicitor(s) or assistant(s) work on your Claim. Counsel's Fees will depend on which counsel work on your Claim.
3. Tom Longstaff will be the main solicitor responsible for your case, but some work may need to be done by an alternative solicitor or counsel. There are also many services, such as gathering information and preparing routine documents that our paralegal assistant(s) is well qualified to perform. A paralegal works under the supervision of a solicitor. Paralegal(s) can serve you at lower cost than one of the Firm's solicitors can.
4. The Firm's hourly rate are currently based on these rates:

| Legal representative            | Hourly rate (£) |
|---------------------------------|-----------------|
| Partner                         | 895             |
| Of counsel                      | 735             |
| Legal Director                  | 650             |
| Associate (4-7 years qualified) | 610             |
| Associate (0-3 years qualified) | 525             |
| Trainee                         | 305             |
| Paralegal                       | 250             |

5. All rates quoted are exclusive of VAT. The Firm will review its hourly rates on an annual basis in the month of July, or, when there is a review of hourly rates by HM Courts & Tribunal Services at any point in the year. The Firm will give you advance notice of any change to its hourly rates.

#### Counsel Team Fees

6. Counsel's hourly rates can vary between £1,000 p/h for a senior KC to £200 p/h for a junior barrister.

### **SCHEDULE 3**

#### **Reasons for DBA Payment Percentage**

The DBA Payment Percentage is set at the level it is for the following reasons:

1. The Claim is complex, both legally and factually, and requires significant technical and legal expertise in order to be pursued.
2. The Claim may be pursued as a group action, which increases the complexity of the management of the case and the likely duration of the proceedings.
3. Because of the above factors, the Claim would take significantly longer than most typical commercial litigation claims to reach a final conclusion and could take as long as 5 to 8 years to reach a final conclusion.
4. The importance of the technical and legal issues raised by the Claim, as well as the issues of complexity identified above, mean that there is a greater than usual chance that court orders made in the course of the proceedings will be appealed.

The DBA Payment Percentage is not set by reference to the specific facts of Your Claim, or the prospect of your individual case succeeding or failing. The staged percentage is a standard fee which we apply to all claims of this type. It is the only basis on which we are prepared to offer our services to you for a claim of this type. You should be aware that other firms of solicitors may offer different forms of funding or forms of funding with different percentages of damages payable as part of other funding packages. We are not able to advise in relation to the funding arrangements other firms may offer. We consider this Agreement and the percentage that will apply to be reasonable in all the circumstances.

For the reasons above, we believe that the percentage set out above is a reasonable DBA Payment for our services and for taking the risks of acting in respect of your Claim on a no win no fee basis. By agreeing to this Agreement, you confirm that You have understood that the level of DBA Payment Percentage is set on this basis and that you agree with the level of the DBA Payment Percentage and understand the reasons given.

## SCHEDULE 4

### Notice of the Right to Cancel

This only applies if you sign this Agreement:

- (i) At your home, workplace or at someone else's home; or
- (ii) At our offices but following a visit by us (or by someone acting on our behalf) to your home, workplace or someone else's home; or
- (iii) At our offices but following a meeting between us away from our offices.

You have the right to cancel this Agreement, without reason, if you wish and can do so by delivering, sending (including electronic mail) a cancellation notice to the person mentioned below at any time within 14 days starting with the day of receipt of this Notice.

The person to whom a cancellation notice may be given is Tom Longstaff of KP Law Limited of 3 Hardman Square, Manchester M3 3EB; Case Reference Number: TL/1.

Notice of cancellation is deemed to be served as soon as it is posted or sent to us.

If you wish to cancel the contract, you **must do so in writing** and deliver personally or send (which may be by electronic mail) this to the person named below. You may use this form if you want to but you do not have to.

.....

(Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE AGREEMENT)

To: Tom Longstaff – tom.longstaff@kpl.co.uk

at: KP Law Limited of 3 Hardman Square, Manchester M3 3EB; Case Reference Number: TL/1

I hereby give notice that I wish to cancel my Agreement with your firm.

Signed: .....

Name: [Name]

Address: [Address]

Date: .....

## **SCHEDULE 5**

### **CLAIMANT INSTRUCTIONS AND MANAGEMENT AGREEMENT**

#### **Appointment**

1. You agree to appoint the Firm to represent you and pursue your Claim for Damages arising from illness and disease caused by your use of defective 3M Combat Arms Ear Plugs.

#### **Damages Based Agreement**

2. You have been provided with a copy of the Damages Based Agreement. It sets out the basis on which the Firm has agreed to act on your behalf. The DBA is a complicated agreement. Please read it carefully. If there is anything you wish clarifying, then please ask us. The appropriate contact is Tom Longstaff at: KP Law Limited of 3 Hardman Square, Manchester M3 3EB.
3. The meaning of words and phrases in this Agreement shall carry the same meaning as in the DBA. Please therefore refer to the definitions of the DBA.
4. You agree to comply with your Obligations under the DBA.

#### **How your Claim will be managed**

5. If following a review and assessment by the Firm of the prospects or merits of your Claim and on receipt of and following the relevant legal advice, the Firm decides that the Claim should be pursued, then the preparation and pursuit of the Claim will be managed and conducted by the Firm in accordance with a Litigation Management Agreement dated [    ].
6. Your Claim will be entered onto a register of claims ("The Register"). It will be handled and progressed along with all other claims on the Register ("the Group").

#### **Legal Costs**

7. The DBA sets out the terms on which the Firm is prepared to act for you in your Claim.
8. If you win your Claim, you may be able to recover some of your legal costs from your opponent.
9. If you fail in your Claim, you are likely to be ordered to pay the other party's costs, though this may not be enforceable against you if your Claim is subject to Qualified One Way Costs Shifting (see the DBA for further details). In a group claim, it is likely to be a pre-condition to your Claim being accepted on the Register and managed under the LMA that appropriate and suitable after the event insurance ("ATE") is in place in your case to cover any adverse costs orders made against you. The Firm and Counsel Team will not be able to represent you and act in your case unless ATE is first put in place to their satisfaction, at their absolute

discretion. See clause 10 below.

### **After the Event Legal Expense Insurance**

- 10.** You irrevocably authorise the Firm to obtain ATE insurance or any at least equivalent protection against Adverse Costs on your behalf in relation to the Claims and/or the Proceedings and to a level of insurance cover or protection appropriate to the size and nature of the Proceedings as the Firm and Counsel Team considers reasonable in their absolute discretion.
- 11.** For the avoidance of doubt the Firm and/or Counsel Team will not pursue any Claims or Proceedings that include the Claims unless and until such ATE insurance cover or at least equivalent protection is in place.

### **How we conduct your Claim**

- 12.** In group litigation, it is not usually possible for solicitors to take instructions from each individual client about how best to conduct their claims. In such a case, you therefore authorise the Firm to take all the steps it considers appropriate to best conduct your Claim, including (but not limited to):
- a) deciding what types of legal claims to pursue on your behalf and how best to put these forward;
  - b) making strategic decisions on how best to progress the Claim, including decisions regarding preliminary legal issues, lead Claims and appeals;
  - c) issuing legal proceedings where appropriate;
  - d) deciding what type of generic evidence is needed and obtaining such evidence;
  - e) selecting and instructing appropriate barristers in your Claim;
  - f) selecting and instructing appropriate experts and filing and serving expert evidence;
  - g) agreeing case management directions and extensions of time with your opponent and seeking the court's resolution where appropriate;
  - h) making and defending interim applications where agreement with your opponent cannot be reached or where the court's permission or approval is required;
  - i) entering into Settlement negotiations or alternative dispute resolution with your opponent, and where appropriate, settling the Claims;
  - j) taking all steps to recover our costs from your opponent, including commencing detailed assessment proceedings and entering Settlement negotiations or alternative dispute resolution;

- k) give consent on your behalf in the event that any member of the group is required to discontinue their claim; and
- l) instructing other solicitor's firms or groups of firms to carry out work on your behalf, if we consider appropriate.

**13.** Where exercising our authority under paragraph 12, the Firm will always act in the best interests of the majority of the group. If the best interests of the majority of the group differ from your best interests, the Firm will advise you of this. You agree that the Firm and Counsel Team may cease to act for you in these circumstances. Where possible the Firm will refer you to alternative solicitors.

**14.** You authorise the Firm, where it becomes necessary in the absolute discretion of the Firm to establish a Claimant Representative Committee ("the Claimant Representative Committee") comprising representatives of the claimant group to represent your and the wider claimant group interests. Such a Committee will have authority to bind you and the Claimant group in respect of the steps the Firm and/or Counsel Team considers appropriate to best conduct your Claim.

**15.** You hereby warrant and/or represents to the Firm that so far as you are aware (after making reasonable enquiries) any Defendant has no relevant rights of set-off or claims against you that have not been fully disclosed to the Firm and there are no circumstances which would affect the validity or enforceability of the Claims.

#### **Appointment of Counsel**

**16.** Your Claim will be conducted by the Firm. You agree that the Firm shall have the right to instruct and retain Counsel as they think fit, and on such terms as they think fit, to advise and represent you as required in relation to all matters arising from the investigation, pleading and preparation for and trial of the common/generic issues, including case management and in relation to costs and costs management and the co-ordination of the Claimants/Claimants' Representatives.

**17.** Instructions on your behalf and on behalf of all other claimants in the Group will be provided to the Counsel Team by the Firm.

#### **Apportionment of Claimant Costs**

**18.** As you are bringing a Claim as part of a group of claimants, when seeking to recover costs from the Defendant, your notional liability for the Firm's Fees will reflect work done and Counsel's Fees incurred on your individual Claim, and also a pro rata proportion in respect of work done and Counsel's Fees which are common to all of the claimants' claims ("common costs").

**19.** Subject to the court ordering otherwise, your (notional) pro rata share of the common costs will be in proportion to your pro rata share of the total Settlement sum or award received by the claimant group.

20. If there is no Settlement sum or award, your pro rata share of the common costs will be equal to its estimated claim as a proportion of the total estimated claim of the claimant group.
21. Similarly, you will be liable for Expenses incurred on your individual Claim and also a pro rata proportion of the Expenses which are common to all of the claimants' claims.

### **Liability for Adverse Costs**

22. Any liability which you have for adverse costs shall fall to be decided either by agreement between you and the Opponents or by the Court.
23. In addition to any liability for adverse costs in relation to your individual Claim, you will be liable for the opponent's common costs (costs it has incurred in defending common issues of fact or law across the Group) and your share of those costs shall be calculated on the basis that you will be severally liable for an equitable pro rata share of those costs, subject to the court ordering otherwise.
24. To the extent that any agreement or court order in respect of adverse common costs does not reflect the terms of the above paragraph you agree to indemnify any other members of the group to the extent necessary such that each Group member's liability in respect of adverse common costs shall be shared equally as previously set out in the preceding paragraph.
25. Nothing in this Agreement is intended to give rise to or impose a joint or joint and several liability upon any Claimant in respect of adverse costs.

### **Claimants joining or leaving**

26. Any additional claimant joining the Register shall be liable for the common costs and a share of any adverse common costs in accordance with the terms of this Agreement.
27. For the avoidance of doubt that claimant shall be liable for any past common costs or adverse common costs as if he had been a Claimant from the date on which this Agreement was first signed, on the basis that common costs incurred before the date of instruction by that claimant will relate to work which is likely to be of benefit to that claimant's claim, regardless of the date of instruction in relation to his individual claim.

### **Confidentiality**

28. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the subject matter of this Litigation, including any matters relating to this Agreement and/or the funding of this Litigation except as permitted by clause 29.
29. Each party may disclose the other party's confidential information:
- (a) to the extent necessary for the purposes of carrying out the party's obligations under this Agreement; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 30.** No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

#### **General Provisions**

- 31.** In the event that any term or condition or provision of this Agreement is deemed by any competent court or tribunal to be a violation of any applicable law or statute or regulation or to be invalid, illegal or unenforceable in whole or in part for whatever reason, the same shall be deemed to be deleted from the Agreement and shall be of no force and effect to the extent only of such invalidity, illegality or unenforceability and this Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement, and this Agreement shall be deemed amended in such manner to render it compliant with the applicable law.

- 32.** To be effective, any variation of or supplement to this Agreement must be made in writing.

#### **Law**

- 33.** This Agreement shall be governed by and construed in accordance with English Law. Any dispute arising out of or in connection with, or concerning the carrying into effect of, this Agreement shall be subject to the exclusive jurisdiction of the High Court of England, and the parties hereby submit to the exclusive jurisdiction of that court for these purposes.